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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

19 CR 366 (LGS)

5 STEPHEN M. CALK,

6 Defendant.

7 -----x
8 New York, N.Y.
9 June 23, 2021
10 12:50 p.m.

11 Before:

12 HON. LORNA G. SCHOFIELD,

13 District Judge
14 And A Jury

15 APPEARANCES

16 AUDREY STRAUSS

17 United States Attorney for the
18 Southern District of New York

19 PAUL MONTELEONI

20 HAGAN SCOTTEN

21 ALEXANDRA ROTHMAN

22 KRAMER LEVIN NAFTALIS & FRANKEL

23 Attorneys for Defendant

24 BY: PAUL SCHOEMAN

25 DARREN LaVERNE

MICHELLE BEN-DAVID

LOEB & LOEB

Attorneys for Defendant

BY: JEREMY MARGOLIS

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1 THE COURT: I understand that the parties had
2 something to raise before the jury arrives.

3 MR. SCOTTEN: I'll say what it is, your Honor. The
4 defense says they are not doing anything with it yet so it can
5 wait.

6 But in docket 225, our second issue, your Honor, was
7 that we didn't think it was appropriate to bring in the
8 evidence or make an argument about the sort of post hoc
9 performance of the loans, the sort of odyssey that the Manafort
10 loans went through after issuance of nonpayment, default,
11 seizure by the government, Manafort's pardon and so on. And
12 the defense response, as I understood it, was --

13 THE COURT: I'll hear from them.

14 MR. SCOTTEN: Our point is, it doesn't really matter
15 what the defense response is. From our point of view, if it
16 happened after the loan issued, it can't be borne upon the
17 defendant's state of mind. And I think the Court has rather
18 consistently excluded evidence that was post hoc, whether it
19 was military developments they wanted in or the OCC's later
20 evaluation, so we have been consistent with that, because it
21 has no relevance and particularly because it's a particularly
22 confusing saga that has no probative value, it need not come
23 in.

24 THE COURT: I recall reading your submission. But I
25 would like to have my recollection refreshed, so I'll hear from

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1 the defense.

2 MR. LaVERNE: I said to Mr. Scotten I thought we could
3 work this out in two minutes in a conversation.

4 THE COURT: Why don't you just talk to each other.

5 The mics are working now.

6 MR. LaVERNE: Your Honor, as I suspected, we worked it
7 out. The government is not going to reference the writeoff of
8 the loans or what happened in the loans after they were
9 extended. If they do not do that, we are not going to bring
10 into evidence, similarly, the history of the loans after they
11 were issued.

12 THE COURT: Thank you.

13 MR. SCHOEMAN: I just want to say, I will refer to the
14 loans as loans that were intended to be profitable. I won't
15 say what happened after that, but at the time that they were
16 being made they were intended to be profitable loans.

17 THE COURT: I assume.

18 MR. SCOTTEN: We have always understood that was part
19 of the defense case.

20 THE COURT: The jury will be here momentarily.

21 MR. MONTELEONI: Could I inquire if there is a dial-in
22 active and, if so, what the number is. My understanding from
23 talking to the Court's deputy is there would be the Court's
24 normal dial-in line, but there wasn't an official notice on the
25 docket. We have just gotten a lot of questions about whether

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1 there is a dial-in.

2 THE COURT: I don't know. I can tell you what that
3 dial-in line is.

4 MR. MONTELEONI: If it's the same number that was
5 published for the final pretrial conference, then we have that
6 number. That's what I have provisionally provided to people.

7 THE COURT: I am not sure. I think Mr. Street has to
8 open that line. I know there is an overflow courtroom with a
9 video and audio feed, and I know there is a direct feed into
10 the press room, but I don't know if there is a separate
11 dial-in.

12 MR. MONTELEONI: Understood. If there is not going to
13 be a dial-in line, we can inform people. I thought that I saw
14 a reference to it in the Court's trial procedures. So if there
15 was one, I wanted to make sure I give people the correct
16 information.

17 THE COURT: I'll defer to Mr. Street on that. So you
18 can ask him when he arrives.

19 MR. MONTELEONI: Thank you, your Honor.

20 (Recess)

21 (Jury present)

22 THE COURT: Members of the jury, now that you have
23 been sworn in, and you took the oath across the street, I'll
24 tell you about your duty as jurors and give you instructions to
25 help you understand what will be presented during the trial.

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1 At the end of the trial I'll give you instructions
2 again and those instructions will control your deliberations.
3 At the end of the presentation of the evidence and after my
4 final charge to you, it will be your duty to decide what to
5 decide from the evidence what the facts are.

6 You and you alone are the judges of the facts. You
7 will hear the evidence, decide what the facts are, and then
8 apply those facts to the law which I will give to you, and
9 that's how you will reach your verdict.

10 My duty is to instruct you as to the law and it is
11 your duty to accept my instructions and apply them to the facts
12 as you determine them. On these legal issues you must take the
13 law as it give it to you, whether you agree with it or not. If
14 any attorney states that the law is different from what I state
15 to you in my instructions, it is my instructions you must
16 follow.

17 You must not take anything I say or do during the
18 trial as indicating a view of mine on any issue, including what
19 your verdict should be. I will not express or imply any
20 opinions about whether you should believe or disbelieve any
21 witnesses or what facts are established or what inferences
22 should be drawn from the evidence or lack of evidence. You are
23 the sole judges of all of the questions of facts submitted to
24 you and, as the sole judges of the facts, you must determine
25 which of the witnesses you will believe, what portion of their

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1 testimony you will accept, and what weight you will attach to
2 it.

3 The burden is on the government to prove guilt beyond
4 a reasonable doubt and, as I'll instruct you in more detail
5 after the lawyers have presented their cases, reasonable doubt
6 is based on reason and common sense. It's a doubt that a
7 reasonable person has after carefully weighing all of the
8 evidence or a doubt that would make a renal person hesitate to
9 act in a manner of importance in his or her own life.

10 The burden to prove guilt beyond a reasonable doubt
11 never shifts to Mr. Calk because the law never imposes on a
12 defendant in a criminal case the burden or duty of calling any
13 witness or producing any evidence. The law presumes Mr. Calk
14 to be innocent of all the charges against him.

15 If, after careful consideration of all the evidence or
16 lack of evidence at the end of the trial and following the
17 rules of law as I will explain to you, you have a reasonable
18 doubt about Mr. Calk's guilt, then you must acquit him. Then
19 you must find him not guilty. If, however, after careful
20 consideration of all the evidence presented and following the
21 rules of law that I will explain, you are convinced that the
22 prosecution has proven the elements of the offense beyond a
23 reasonable doubt, then you must convict him; that is, find him
24 guilty.

25 You will decide what the facts are from the evidence

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1 that will be presented in court and that evidence will consist
2 of the testimony of witnesses, documents, and other things
3 received into evidence as exhibits and any fact that the
4 lawyers agreed to or admit or that I may instruct you to find.
5 The fact that a particular exhibit may be labeled as a
6 government exhibit or, alternatively, as a defense exhibit is
7 not important. It's just a label. It does not tell you
8 anything about the substance of the exhibit itself.

9 There are two kinds of evidence: Direct and
10 circumstantial. Direct evidence is testimony by a witness
11 about what that witness personally saw or heard or did.
12 Circumstantial evidence is indirect evidence, that is, proof of
13 one or more facts from which you can find another fact. So
14 there is a simple example of circumstantial evidence that's
15 often used in the courthouse.

16 Assume when you came into the courthouse this morning
17 the sun was shining, as it is, and it was a nice day, and
18 assume that the curtains here were all shut, so you couldn't
19 see outside. And as you were sitting here, someone walked in
20 with an umbrella that was dripping wet and then a few minutes
21 later someone else came in with an umbrella that was dripping
22 wet. Now, you can't look outside and see with your own eyes
23 that it's raining, but you could reasonably infer from what
24 you've seen in all the circumstances that it's raining, and
25 that's really all there is to circumstantial evidence. You

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1 infer on the basis of reason and experience and common sense
2 from one established fact, that is, the dripping umbrellas, the
3 existence or nonexistence of some other fact, and that is the
4 fact that it's raining outside.

5 You may consider both direct and circumstantial
6 evidence in deciding the case. The law permits you to give
7 equal weight to either one or weight to neither and it's up to
8 you to decide how much weight, if any, to give to any evidence.
9 There is no magic formula by which you should evaluate
10 testimony or exhibits. I will, however, give you some
11 guidelines for determining the credibility of witnesses at the
12 end of the case. Right now I will just say that you bring with
13 you into the courtroom all of the experience and background of
14 your lives. You don't have to leave your common sense outside
15 the courtroom.

16 During the trial I may sustain objections to questions
17 that are asked. And when that happens, I won't permit the
18 answer to answer. Or if the witnesses has already answered, I
19 will instruct that the answer be stricken from the record and
20 that you disregard it and dismiss it from your minds.

21 In reaching your decision you may not draw any
22 inference from an unanswered question, nor may you consider
23 testimony that I've stricken from the record and told you to
24 disregard. You should not show any bias against any attorney
25 or the attorney's client because the attorney objected to the

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1 admissibility of evidence or ask for a conference outside the
2 hearing of the jury or ask the Court for a ruling on the law.
3 It is the attorney's duty to do all of these things.

4 You should also understand what is not evidence. What
5 the attorneys say in their opening statements or closing
6 arguments, objections, questions is not evidence. Neither is
7 testimony that I instruct you to disregard. Also anything I
8 say is not evidence. The only oral testimony that is evidence
9 comes from the witnesses who will be sitting in this strangely
10 outfitted witness stand. What the lawyers say to you in their
11 arguments to you are not evidence. Their arguments are
12 commentary to help you understand the evidence. For example,
13 the lawyers may make an opening statement and tell you what
14 they expect the evidence to show, but what they say is not
15 itself evidence and it's only what's actually introduced into
16 evidence that you may consider in reaching your verdict. If in
17 the course of your deliberations your recollection of the facts
18 differs from what one of the lawyers says, it is your
19 recollection that governs.

20 Further, anything you may see or hear when the Court
21 is not in session, even if what you see or hear or seen done is
22 permitted by the one of the parties or one of the witnesses,
23 anything that happens or that you see outside the courtroom is
24 not evidence. Only what is admitted into evidence here, when
25 the court is in session and all parties and jurors are present,

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1 may be considered by you as evidence.

2 You may hear testimony of law enforcement agents and
3 government employees. The fact that a witness may have been or
4 is employed by the U.S. Government, including a law enforcement
5 official, does not mean that his or her testimony is
6 necessarily deserving of more or less consideration or greater
7 or lesser weight than that of any other witness. It is your
8 decision, after reviewing all the evidence, whether to accept
9 the testimony of the law enforcement witnesses and government
10 employees. You should give that testimony whatever weight, if
11 any, you think it deserves.

12 Everyone, including me, has feelings, assumptions,
13 perceptions, fears, sympathies, generalizations, prejudices,
14 stereotypes that we may not be aware of or that we may be aware
15 of. The ones we are not aware of are called implicit biases
16 and these biases may concern race, gender, national origin,
17 sexual orientation, class, education, and many other issues.
18 These hidden thoughts can impact what we see and hear and how
19 we remember what we see and hear and how we make important
20 decisions.

21 Because you are making very important decisions in
22 this case, I strongly encourage you to evaluate the evidence or
23 lack of evidence carefully and resist to jumping to conclusions
24 based on personal likes or dislikes, generalizations, gut
25 feelings, prejudices, sympathies, stereotypes, or biases. The

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1 law demands that you return a just verdict based solely on the
2 evidence, your individual evaluation of the evidence, your
3 reason and common sense, and these instructions. Our system of
4 justice is counting on you to render a fair decision based on
5 the evidence and not on biases.

6 This is a criminal case. It's brought in the name of
7 the United States against Stephen M. Calk. The fact that the
8 prosecution is brought in the name of the United States does
9 not entitle the government to any greater consideration than
10 that accorded to Mr. Calk. All parties stand as equals in this
11 court.

12 Mr. Calk is charged with two crimes: Financial
13 institution bribery and conspiracy to commit financial
14 institution bribery. You should each have a screen in front of
15 you with a little slide presentation that summarizes what I am
16 saying. Each of these is a separate offense or crime and you
17 must, therefore, consider each charge separately and return a
18 separate verdict on each charge.

19 The first charge is financial institution bribery.
20 The government alleges that Mr. Calk, while the chairman and
21 CEO of the Federal Savings Banks and National Bank Corp.,
22 corruptly solicited and received assistance in obtaining a
23 volunteer position with the Donald J. Trump presidential
24 campaign and a senior position with the then incoming Trump
25 Administration intending to be influenced and rewarded in

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1 connection with the extension of loans to Paul Manafort.

2 The second charge is a conspiracy charge. The
3 government alleges that: From about July 2016 until around
4 January 2017, Mr. Calk conspired to commit financial
5 institution bribery, meaning that he agreed with one or more
6 people to commit the first charge.

7 Mr. Calk has pleaded not guilty to both charges and
8 you must remember that Mr. Calk is presumed innocent unless the
9 government meets its burden of proving that he is guilty beyond
10 a reasonable doubt.

11 I am going to tell you about some of the law that you
12 will have to apply to the facts as you find them. These are
13 only preliminary and summary instructions. They are intended
14 to help you evaluate the evidence in light of what you will be
15 asked to do after you have heard all of the evidence. The
16 final instructions that I give you at the end of the trial will
17 contain more detail about the applicable law. To the extent
18 there are any differences between these preliminary
19 instructions and the final instructions at the end of trial,
20 the final instructions will be controlling, meaning that those
21 final instructions are the ones that you must follow in your
22 deliberations.

23 I'll tell you again later, perhaps many times during
24 the trial, it's important that you keep an open mind during the
25 duration of the trial until you have a the chance to deliberate

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1 with each other at the very end of the trial after you have
2 heard all of the evidence.

3 Now I'll briefly summarize what the government must
4 prove beyond a reasonable doubt for the crimes charged against
5 Mr. Calk. You will be asked to return a verdict on these
6 alleged crimes.

7 The first charge against Mr. Calk is for financial
8 institution bribery. In order to find him guilty of this
9 crime, the government must prove four elements beyond a
10 reasonable doubt:

11 First, that at the time of the offense alleged in the
12 indictment, Mr. Calk was an officer, director, employee, or
13 agent of a financial institution.

14 Second, that Mr. Calk, accepted, solicited, or
15 demanded or accepted or agreed to accept, solicit or demand
16 something of value.

17 Third, that Mr. Calk did so corruptly and with the
18 intent to be influenced or rewarded in connection with any
19 business or transaction of a financial institution.

20 Fourth, that the value of the thing accepted by
21 Mr. Calk had a value greater than \$1,000.

22 For the first element the government must prove beyond
23 a reasonable doubt is that at the time of the offense alleged,
24 Mr. Calk was an officer, director, employee, or agent of a
25 financial institution.

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1 To satisfy this element the government must prove that
2 the financial institution is one whose deposits are insured by
3 the Federal Deposit Insurance Corporation or one that controls
4 an institution whose deposits are insured by the Federal
5 Deposit Insurance Corporation and that Mr. Calk was an officer,
6 director, or agent of that financial institution.

7 The second element that the government must prove
8 beyond a reasonable doubt is that Mr. Calk accepted or agreed
9 to accept or solicited or demanded something of value. The law
10 makes no distinction between accepting, agreeing to accept, or
11 soliciting or demanding a bribe. The mere soliciting or
12 demanding of a bribe is just as much a violation of the statute
13 as actually receiving one.

14 The third element the government must prove beyond a
15 reasonable doubt is that Mr. Calk accepted or agreed to accept
16 or solicited or demanded something of value corruptly and with
17 intent to be influenced or rewarded in connection with any
18 business or transaction of the Federal Savings Bank.

19 To act corruptly simply reply means to act voluntarily
20 and intentionally, with an improper motive or purpose to
21 influence or be rewarded. This involves conscious wrongdoing
22 or, as it is sometimes expressed, a bad or evil state of mind.
23 The government must prove that a bribe is sought or received by
24 Mr. Calk directly or indirectly in exchange for the promise or
25 performance of action in connection with the business or

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1 transactions of the financial institution.

2 In considering this element remember that it is
3 Mr. Calk's intent to be influenced or rewarded, that is
4 important, not what actually happened later. So the government
5 does not have to prove that Mr. Calk received the bribe or that
6 the bribe actually influenced the final decision of the bank.
7 It is not even necessary that Mr. Calk had the authority to
8 prove the acts charged.

9 Also, if you find that Mr. Calk accepted or agreed to
10 accept or solicited or demanded something of value with the
11 intent to be rewarded for a decision already made, it does not
12 matter that the bribe was not accepted until after the
13 financial institution business or transaction occurred.

14 Fourth and final element the government must prove
15 beyond a reasonable doubt is that the thing of value accepted
16 or agreed to be accepted was solicited or demanded by Mr. Calk
17 had a value greater than \$1,000. The government need not prove
18 the exact value of the thing as long as there is proof beyond a
19 reasonable doubt that the value exceeded a thousand dollars.
20 The value of the thing may be measured by its value to the
21 defendant, the value of what is exchanged for, or its market
22 value.

23 I want to turn now to the second count. Count Two
24 charges Mr. Calk with conspiracy to commit financial
25 institution bribery, meaning that he agreed with at least one

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1 other person to commit the crime I just described, which is
2 financial institution bribery.

3 What is a conspiracy? A conspiracy is a kind of
4 criminal partnership, a combination or agreement of two or more
5 persons to join together to accomplish some unlawful purpose.
6 A conspiracy to violate a federal law is itself a criminal
7 offense. It does not matter if the conspiracy succeeds. A
8 conspiracy is a separate and distinct crime from the actual
9 violation of any specific federal laws which the law refers to
10 as substantive crimes.

11 So conspiracy to commit financial institution bribery
12 is an entirely distinct and separate crime from the substantive
13 crime financial institution bribery. Under the law, an
14 unlawful conspiracy can exist even if it fails to accomplish
15 its purpose.

16 To prove the conspiracy charge, the second count, the
17 government must prove each of the following three elements
18 beyond a reasonable doubt: First, that two or more persons
19 agreed to violate the federal law prohibiting financial
20 institution bribery; second, that Mr. Calk knowingly and
21 willfully became a member of this conspiracy; and, third, that
22 any member of the conspiracy committed an overt act in
23 furtherance of the conspiracy.

24 The first element that the government must prove
25 beyond a reasonable doubt is that a conspiracy to violate

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1 federal law existed. In this case that means that there was an
2 agreement or understanding between two or more people to
3 violate the law that makes it illegal to commit financial
4 institution bribery, the crime I previously defined as the
5 first charge.

6 The essence of the crime of conspiracy is the unlawful
7 combination or agreement to violate the law. The success or
8 failure of the conspiracy is not material to the question of
9 guilt or innocence of the conspirator because a conspiracy is a
10 crime entirely separate and distinct from the substantive crime
11 that may be the goal of the conspiracy. That is, a criminal
12 agreement standing alone is a separate crime and the crime of
13 conspiracy is complete once the unlawful agreement is made.

14 To establish the existence of a conspiracy, the
15 government is not required to show that two or more persons sat
16 around a table and entered into a solemn pact. Conspirators do
17 not usually reduce their agreements to writing, nor do they
18 publicly broadcast their plans. Your common sense will tell
19 you that when people undertake to enter into a criminal
20 conspiracy, much is left to unexpressed understanding. Express
21 language or specific words are not required to indicate a
22 consent or attachment to a conspiracy. It is sufficient if two
23 or more persons in some way or manner impliedly or tacitly come
24 to a common understanding to violate the law.

25 If upon consideration of all the evidence, direct and

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1 circumstantial, you find that the government has proved beyond
2 a reasonable doubt that there was an agreement by two or more
3 persons to commit financial institution bribery, then proof of
4 the existence of the conspiracy is established. But mere
5 discussions about crimes or mere knowledge of crimes, without
6 an agreement to commit them, is not a conspiracy and an
7 agreement to achieve a lawful goal is not the same as a
8 criminal conspiracy. Two or more individuals must have agreed
9 to commit a crime which here is financial institution bribery.

10 The second element the government must prove beyond a
11 reasonable doubt is that the defendant knowingly and willfully
12 became a member of the conspiracy; in other words, that he
13 knowingly and willfully associated himself with the conspiracy
14 and participated in the conspiracy with knowledge of its
15 unlawful purpose and with an intent to aid in the
16 accomplishment of its unlawful objective. However, a person's
17 mere association with a member of a conspiracy does not make
18 that person a member of the conspiracy. Even when the
19 association is coupled with knowledge that a conspiracy exists.
20 Knowledge without agreement and participating is not
21 sufficient.

22 The terms knowingly and willfully mean that you must
23 be satisfied beyond a reasonable doubt that in joining the
24 conspiracy, if you find that Mr. Calk did join the conspiracy,
25 that Mr. Calk knew what he was doing and that he took actions

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1 in question deliberately and voluntarily rather than by
2 mistake, accident, mere negligence or some other innocent
3 reason. It is not necessary that Mr. Calk be fully informed as
4 to all the details of the conspiracy to justify an inference of
5 knowledge on his part. To have guilty knowledge, Mr. Calk need
6 not have known the full extent of the conspiracy or all of its
7 activities or participants.

8 The third and final element that the government must
9 prove beyond a reasonable doubt is that at least one member of
10 the conspiracy, not necessarily Mr. Calk, committed at least
11 one overt act in furtherance of the conspiracy. In other
12 words, there must have been something more than a simple
13 agreement. There has to have been at least one overt step or
14 action by at least one of the conspirators to further the
15 conspiracy. To put it another way, the law requires that the
16 agreement was reached and that it went simply beyond talking.
17 The government must show that at least one of the conspirators
18 actually did something in furtherance of the agreement.

19 Although you must find unanimously that an overt act
20 in furtherance of the conspiracy has been proved, you don't
21 have to be unanimous as to what that act was. It's not
22 necessary that the government prove that all members of the
23 conspiracy or Mr. Calk himself participated in an overt act.
24 It suffices if any member of the conspiracy performed an overt
25 act in its furtherance. The overt act standing alone may be

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1 totally innocent and a lawful act.

2 Frequently, however, an innocent act sheds its
3 harmless character if it is a step in carrying out or promoting
4 or aiding or assisting a conspiratorial agreement. You are
5 therefore instructed that the overt act does not have to be an
6 act which in and of itself is criminal or constitutes an
7 objective of the conspiracy.

8 That's it for the two charges.

9 The one thing I will add, in addition to the elements
10 of those two charges, as I have just described them, you must
11 consider the issue of venue, namely, whether any act in
12 furtherance of the unlawful activity occurred here within the
13 Southern District of New York, which includes Manhattan. The
14 government must prove venue by a preponderance of the evidence,
15 unlike the elements I have just described, which all must be
16 proved beyond a reasonable doubt. I'll explain burden of proof
17 to you at the end of the trial.

18 I think probably tomorrow we will provide each of you
19 with blank paper so you can take notes. Please don't write
20 anything on the front page except your juror number so we know
21 whose it is.

22 You don't have to take notes, but you may, if you
23 wish. Please be sure, though, that any note taking doesn't
24 interfere with your listening and considering all the evidence.
25 Also, if you take notes, you must not show them to anyone or

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1 discuss them with anyone, even other jurors, even when you are
2 deliberating. Any notes you take are to be used solely by you
3 to assist you and your notes are not a substitute for what you
4 remember. The fact that a particular juror takes notes
5 entitles that juror's views to no greater weight than any other
6 juror.

7 If during your deliberations you have any doubts as to
8 any of the testimony, you will be permitted to ask for the
9 official transcript which is being made by our court reporter
10 be read back. As I said, when you get the paper, put your
11 juror number on the front page. Whenever you leave the
12 courtroom, leave the paper on your chair. When you are not in
13 a courtroom, we will be sure that no one looks at or tampers
14 with your notes, and we will lock the courtroom at night to be
15 sure that no one looks at or tampers with your notes. At the
16 end, when you deliberate, you will be entitled to take the
17 notes with you into the jury room to deliberate, and then we
18 will destroy them at the end of your deliberations.

19 I also want to caution you about certain principles
20 about your conduct as jurors. I told you a little bit about
21 this when we were sitting in the larger group.

22 First, you must not talk to each other about the case
23 or about anyone who has anything to do with the case until the
24 very end, when you go into the jury room to deliberate and
25 decide on your verdict.

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1 Second, you must not talk with anyone else about the
2 case or anyone who has anything to do with it until the trial
3 ends and you've been discharged. What I mean here is not only
4 shouldn't you talk to each other, you shouldn't talk to anyone
5 else. That means your family, your friends, your employer.
6 You may tell them you're a juror in a case, you can tell them
7 it's a criminal case, but don't tell them anything about it
8 until you've been discharged by me.

9 Third, don't let anyone talk to you about the case or
10 anyone who has anything to do with it. If someone should try
11 to talk to you, please report that to me immediately by telling
12 Mr. Street, who is my courtroom deputy. You should not,
13 however, discuss with your fellow jurors either that fact or
14 any other fact that you think is necessary to bring to my
15 attention. In other words, don't talk among yourselves about
16 it. Just go straight to Mr. Street and he will report it to me
17 and I'll deal with it.

18 Fourth, don't converse, whether in or out of the
19 courtroom, with any of the parties or attorneys or witnesses.
20 I have already told you about that. By this I mean, not only
21 don't talk about the case, but don't talk about anything with
22 any of the lawyers or the parties. In no other way can
23 everyone be assured of the absolute impartiality they are
24 entitled to expect from you as jurors. As I said, I've told
25 the lawyers and the parties that they are not to talk to you.

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1 They are not even supposed to say hello or good morning outside
2 the courtroom, so please don't hold it against them. They are
3 not being rude. They are just following my instructions.

4 Fifth, do not read any news stories or articles or
5 listen to any radio or television reports about the case or
6 about anyone who has anything to do with it.

7 Sixth, do not do any research or investigation on your
8 own. You must decide the case based solely on the evidence
9 presented here in court, and that means that you must not
10 conduct any independent research. What that means is don't go
11 home and start Googling things about the case. Save that for
12 after the trial is completely over and you've rendered your
13 verdict, and then you can do that to your heart's desire, but
14 during the trial you must not let yourself be exposed to
15 anything about the case or anyone having anything to do with
16 it.

17 Just to be clear, that means don't use the Internet,
18 don't go to any websites, don't go to any blogs, don't post on
19 any social media anything about the case or your involvement in
20 it. Don't use any electronic tools to get information or to
21 help you think about anything in the case. Everything you
22 learn about the case, as I said, should come from within these
23 four walls.

24 Seventh, do not communicate about the case or research
25 it using any electronic device. Don't use your cell phone or

L6NMCAL1

1 text or e-mail or the Internet or websites or Twitter or
2 Facebook or LinkedIn or YouTube or any social media or
3 networking sites for any tools of technology to communicate or
4 research the case.

5 Until you retire to deliberate, you may not discuss
6 the case with anyone, even your fellow jurors, and after you
7 retire you may begin discussing the case with each other, your
8 fellow jurors, but you cannot discuss it with anyone else until
9 after you return a verdict. The parties are entitled to have
10 you personally render a verdict in the case on the basis of
11 your independent evaluation of the evidence, the Lack of
12 evidence presented here.

13 Obviously, talking to others, including your family or
14 anyone else, before you deliberate, exposing yourself to
15 information outside the courtroom would compromise your service
16 and your fairness to the parties. If you become aware that
17 anyone in the jury is violating this instruction, don't talk
18 about it among yourselves. Please just come immediately to
19 Mr. Street, who will bring it to my attention and I'll deal
20 with it.

21 Let me summarize the stages of the trial for you so
22 you know what to expect.

23 First, there will be opening statements. The
24 government will make an opening statement. They will do that
25 today in just a minute. After that, the defense counsel may,

L6NMCAL1

1 but doesn't have to, make an opening statement. Just a
2 reminder, the opening statement is not evidence. It is just an
3 outline of what the parties intend to prove.

4 After the opening statements, the government will
5 present its case. It will call witnesses. After each witness
6 has testified on direct examination, defense counsel will have
7 the opportunity to cross-examine.

8 Following the government's case, the defense may
9 present a defense case. But because of the presumption of
10 innocence, Mr. Calk is not required to offer any proof, and you
11 may not draw any negative inference or hold it against him in
12 any way if the defense chooses not to put on a case. The only
13 question is whether the government has proved its case beyond a
14 reasonable doubt.

15 After the evidence is completed and before the closing
16 arguments, I'll give you final instructions on the law. Then,
17 finally, attorneys will give you their closing arguments and
18 it's their opportunity to summarize the evidence or lack of
19 evidence in light of the law.

20 After the closing arguments, I'll give you very brief
21 instructions and then you will get the case. You will retire
22 to deliberate on your verdict.

23 Your verdict must be unanimous. Please don't make up
24 your mind about what the verdict should be or sort of
25 hypothetically what you think it might be until the very end,

L6NMCAL1

1 after I have instructed you on the law, you had an opportunity
2 to talk to each other in the jury room and discuss the
3 evidence. Please keep an open mind until then. The parties
4 deserve and the law requires that you give them an opportunity
5 to be fully heard.

6 I'll repeat this at the end of the day, but the
7 general plan is for you to get here by 9:45, in the jury room
8 by 9:45. I'll come out on the bench promptly at 10 and you
9 will come out promptly at 10. If anyone is not here, we will
10 all come out anyway. And I don't mean to be harsh, but we will
11 come out and stare at your empty chair until you arrive. So
12 please, everyone, be on time. You can be early if you like.
13 But please be here by 9:45 so that so you can line up and come
14 in by 10.

15 There are certain days we won't sit. We won't sit on
16 Friday, June 25. We are not sitting this Friday. We are not
17 sitting the following Monday, June 28. For the next weekend,
18 which is the July 4 weekend, we are not sitting Friday, July 2
19 or Monday, July 5. You'll have a four-day weekend. We are not
20 sitting Wednesday, July 14. That means this week we will sit
21 three days and the next three weeks we will sit four days.

22 The schedule for the day is that we will take a lunch
23 break around 1:00 for around 45 minutes. We will take a
24 ten-minute break in the middle of the morning and a ten-minute
25 break in the middle of the afternoon, so please plan

L6NMCAL1

Opening - Ms. Rothman

1 accordingly because those are the breaks we will take.

2 Enough from me. Sorry for all the preliminaries.
3 It's important that I tell you all that. Now we will hear the
4 parties' opening statements, or at least the government's and
5 the defense may, if they like.

6 MS. ROTHMAN: This is a case about greed, but not
7 greed for money. Greed for power.

8 THE COURT: I'm sorry. I am going to interrupt. You
9 need to pull the mic way up close or we are not going to hear a
10 word. You can start over, if you'd like, because I didn't hear
11 you.

12 MS. ROTHMAN: This is a case about greed. But not
13 greed for money. Greed for power, for prestige, for
14 importance. It's about this man, Stephen Calk, who wanted a
15 powerful government title and gave out millions of dollars in
16 bank loans to try and get it.

17 Calk was the chairman and CEO of a bank called the
18 Federal Savings Bank. He pushed his bank to lend \$16 million
19 to Paul Manafort, a political lobbyist. Why did he do it?
20 Calk gave out millions because Manafort gave him things that
21 were even more valuable, a high-profile spot on the
22 presidential campaign and Manafort's help in getting Calk a top
23 government job. In other words, Stephen Calk took a bribe from
24 Paul Manafort. Manafort gave him political favor and Calk gave
25 him bank loans. This for that, loans for influence.

L6NMCAL1

Opening - Ms. Rothman

1 Ladies and gentlemen, that is what this case is about
2 and that is why you are here today. Because Stephen Calk, the
3 head of a bank, took a bribe from Paul Manafort because Calk
4 used the federally insured bank that he oversaw as his personal
5 piggy bank to try and buy himself prestige and power.

6 You are going to learn in this trial that in July of
7 2016, Paul Manafort came to the bank and asked for a loan. At
8 the time, Manafort was running the presidential campaign for
9 Donald Trump. The bank had agreed to make the loan and
10 Manafort put Calk on the campaign. You are going to learn that
11 the Manafort loan had all sorts of red flags at the bank. But
12 Calk didn't care. He pushed the loan forward.

13 You are going to learn that the bank made two loans to
14 Paul Manafort. The first loan closed shortly after election
15 night once it became clear that Manafort can help Calk because
16 Trump had won the election. And the second loan was approved
17 five weeks later once Calk knew that Manafort could try and
18 help him get that top government job.

19 You are going to learn that Calk interviewed for the
20 top government job at Trump Tower, the campaign headquarters.
21 He didn't get the job. He couldn't seal the deal, but Manafort
22 got him in.

23 You are going to learn that Calk tried to hide his
24 crimes. When a reporter asked him how he got put on the
25 campaign, he didn't say one word about Paul Manafort. He even

L6NMCAL1

Opening - Ms. Rothman

1 kept this a secret from members of his boards of directors.

2 Ladies and gentlemen, Stephen Calk thought he had
3 gotten away with it. He thought he could have traded bank
4 loans for political favor and no one would have found out. But
5 he got caught and now he is here in this courtroom in front of
6 all of you to account for what he has done and that is what
7 this trial is about.

8 This opening statement is the government's opportunity
9 to explain what we expect the evidence will show in this trial.
10 I am going to do that in three parts.

11 First, I am going to explain in more detail what do I
12 expect the evidence to show. Then I am going to discuss the
13 different types of evidence that you'll see in this trial.
14 And, third, I'll talk briefly about the charges.

15 What will the evidence show? You will learn that Calk
16 ran the Federal Savings Bank. The bank's money was FDIC
17 insured. If you wanted to get a home, you could go to the bank
18 and get a loan or a mortgage, for that matter, or if you wanted
19 to finish construction on a project, you could go to the bank
20 and get a construction loan to finish that project.

21 Sometimes people who came to the bank already had
22 loans and they wanted new loans. In that case the bank would
23 pay off the old loan and give them a new loan.

24 You will learn the bank had loan officers. These were
25 the salespeople for the bank. They worked to close the loan

L6NMCAL1

Opening - Ms. Rothman

1 and they were paid on commission. You will learn the bank also
2 had a credit committee that approved certain loans. There were
3 three people on the committee, including Calk, but Calk always
4 got his way. Again, he owned most of the bank and he was the
5 boss.

6 In July of 2016, Paul Manafort came to the bank and
7 asked for \$5.7 million to pay off an old loan and finish
8 construction on a property in California. There was a meeting
9 in New York just blocks from this courthouse. Manafort, his
10 son-in-law, and the loan officer were there in person. Calk
11 joined by video from Chicago. At the end of this business
12 meeting Calk offered to help with the campaign.

13 Now, ladies and gentlemen, this was not the first time
14 that Paul Manafort came to the bank for a loan. He had tried
15 once before and the bank said no. But now Manafort was running
16 the presidential campaign and things were different.

17 The very next day after that meeting the bank agreed
18 to do the loan and a few days later Manafort asked the loan
19 officer for a copy of Calk's resumé, and shortly after that
20 Manafort asked Calk to join what was called the economic
21 advisory council, a position on the campaign.

22 Ladies and gentlemen, this council was a big deal. It
23 was filled with successful high-profile businessmen who were
24 advising President Trump. It gave Calk status. It got him on
25 TV making media appearances a lot. Of course he said yes.

L6NMCAL1

Opening - Ms. Rothman

1 Meanwhile, back in the bank the loan was going through
2 what's called underwriting. That just means the bank had to
3 review the loan and the borrower and make sure it wasn't too
4 risky for the bank.

5 What did the bank find out? Problems after problems
6 after problems with Paul Manafort. Manafort's credit score had
7 dropped. Manafort had earned zero income in 2016. Manafort
8 had an unpaid credit card bill of \$300,000.

9 (Continued on next page)

L6NKCAL2

Opening - Ms. Rothman

1 MS. ROTHMAN: (Continuing) Manafort was in default.
2 He wasn't paying his old lender and facing foreclosure on the
3 California property. And if that wasn't enough, news stories
4 reported that Manafort had suspicious dealings with foreign
5 politicians and was stepping down from the campaign.

6 Big picture: The underwriters said that the loan had
7 all sorts of problems that typically would cause a bank not to
8 make the loan. About the only thing the loan had going for it
9 was something called collateral. That meant that Manafort was
10 willing to put up properties that he owned to secure the loan.
11 But, ladies and gentlemen, as you'll learn in this trial, banks
12 don't - in fact, they can't - make loans to a borrower who
13 can't pay just because there's collateral. You could think of
14 collateral like an insurance policy. The bank expects to make
15 money on the loan by collecting monthly interest payments. If
16 the borrower doesn't make those payments, the bank can go
17 after, try to take, the property, and that's called
18 foreclosure. But, ladies and gentlemen, foreclosure, it's
19 expensive, it's risky, it takes time. So, for all of those
20 reasons, the underwriters told the bank, collateral or no
21 collateral, Paul Manafort was a bad man.

22 You will learn that only two people at the bank were
23 pushing this loan forward - the loan officer, who was getting a
24 commission, and Stephen Calk. And by the end of this trial,
25 you will know exactly what Stephen Calk was getting from Paul

L6NKCAL2

Opening - Ms. Rothman

1 Manafort to push that loan forward.

2 You'll learn there was a meeting in September 2016;
3 Paul Manafort and Steve Calk had lunch in New York. At that
4 lunch, Manafort said there was a mortgage on one of the
5 properties that was going to be used as collateral for the
6 loan. No problem, said Calk, the bank would pay off the
7 mortgage. But, then, Manafort emailed with the correction: He
8 needed another million dollars from the bank. Less than two
9 hours later, Calk responded and told the loan officer to do
10 what Manafort needed.

11 Now, you will learn that at the closing table for the
12 first loan, Manafort came in and proposed a totally new loan,
13 and the bank couldn't agree to those terms. Remember, Stephen
14 Calk is a businessman, after all. He's not going to give away
15 the store. He's trying to buy Paul Manafort's influence, but
16 wants to pay as little as possible, and the bank couldn't agree
17 to the terms of this new loan.

18 The bank tried to pass the loan off to another lender,
19 but they wouldn't commit, and Calk wouldn't either. For a
20 while, it looked like the loan was dead.

21 But then came election night 2016. You will learn
22 that election night is an important moment in this case. As it
23 became clear that Donald Trump would win the election, Calk saw
24 his chance. That night, he texted Manafort that the loan
25 would, quote, "be wrapped up," the approval would be wrapped

L6NKCAL2

Opening - Ms. Rothman

1 up, the next day. Think about that. The bank had rejected the
2 loan, it was trying to pass it off to another lender, but now,
3 when it seemed like Manafort could help Calk, Calk was willing
4 to commit to the loan whether or not the other lender was
5 onboard.

6 Calk also asked if he was needed in New York, the
7 campaign headquarters, and said he was ready to support in any
8 way.

9 What happened next? Well, the bank worked to close
10 the loan, and Calk wanted to send a message to Manafort, so he
11 asked his loan officer to call Manafort and see if he was in
12 the running for Secretary of the Treasury. The loan officer
13 didn't make that call, so the next day, Calk picked up the
14 phone and called Manafort himself, and then they were off to
15 the races. Calk emailed Manafort a list numbered one to ten of
16 all the jobs he wanted in the new administration, and, ladies
17 and gentlemen, Stephen Calk was not shy. The top of the list,
18 Secretary of the Treasury, followed by Secretary of Commerce,
19 followed by Secretary of Defense. Calk ultimately set his eyes
20 on Secretary of the Army, the highest ranking civilian position
21 in the U.S. Army. He emailed Manafort a memo of his supposed
22 qualifications to serve and followed with an email in which he
23 wrote: "As you know, my number one desire is to serve as
24 Secretary of the Army."

25 The first loan closed about a week after the election.

L6NKCAL2

Opening - Ms. Rothman

1 Manafort got \$9.5 million that he desperately needed, and Calk
2 got a well-placed recommendation for Secretary of the Army.

3 Now, as I mentioned, there were two loans that the
4 bank made to Manafort. After the first loan closed, Manafort
5 was still desperate for money, and Calk still wanted that job.
6 Manafort needed \$6.5 million to finish construction on a
7 brownstone in Brooklyn and to stop foreclosure. Manafort
8 needed money, and Calk knew it. Manafort emailed Calk that,
9 quote, "The clock is ticking." That same day, Manafort sent
10 Calk's name with a recommendation for Secretary of the Army.
11 Calk's name was added to a list, and right to the right was
12 Paul Manafort.

13 Now, you will learn at trial that banks are limited by
14 law in how much money they can lend to any one lender.
15 Basically, the bank can't put all of its eggs in one basket.
16 The problem was the bank still had that first \$9.5 million loan
17 on its books to Paul Manafort; another 6.5 million would put
18 the bank over that legal limit. Calk tried to get another bank
19 to take the loan off its books, but it wouldn't do it, and for
20 a while, it looked like the second loan was stopped. But then
21 something changed, and this, too, is an important moment in the
22 story.

23 Manafort reached out to a person who was managing the
24 interviews for the jobs in the administration at Trump Tower.
25 Manafort pressed him for an update on Calk's application, and

L6NKCAL2

Opening - Ms. Rothman

1 that person told Manafort would he take Under Secretary of the
2 Army; if so, I think we can get it done. Within minutes, Calk
3 and Manafort were on the phone. They spoke for 11-1/2 minutes,
4 and once that call was done, Manafort told his contact that
5 Calk would take the job.

6 And what happened next is important. The very next
7 day, after the loan had been stalled, after Manafort had been
8 begging for updates and getting nowhere, Calk personally
9 emailed the loan documents to Manafort and said, the bank was
10 ready to close. The bank had agreed to do something it had
11 never done before, to get around that lending limit and to make
12 the loan to Manafort. Calk later told the loan officer that
13 Manafort was, quote, "influential with other people and a few
14 other situations on hand."

15 In January 2017, the second loan closed, and Calk flew
16 to New York for an interview at Trump Tower for the job of
17 Under Secretary of the Army, a top job in the government. In
18 total, Stephen Calk gave \$16 million in loans to Paul Manafort
19 in exchange for Manafort's influence, his political favor, and
20 that interview at Trump Tower.

21 So, how did this all end? Well, as I mentioned, Calk
22 didn't get the job. He went back to the bank, and there,
23 things started to unravel. A news article came out raising
24 questions about the loan, the bank's regulator called for an
25 emergency meeting. At that meeting, Calk lied. He said he

L6NKCAL2

Opening - Ms. Rothman

1 didn't know about the foreclosures on the properties. He later
2 said he never wanted the government job in the first place.

3 Ladies and gentlemen, that is what the evidence will
4 show. So, how are we going to prove it to you? You're going
5 to hear from a number of witnesses, including people who worked
6 at the bank's regulator. They're going to tell you that bank
7 CEOs like Calk know they are not allowed to trade bank loans in
8 exchange for personal benefits, like being considered for a top
9 government job. They'll tell you about the lies from Stephen
10 Calk, the meeting where he denied knowing about the foreclosure
11 and said he didn't want the job in the first place.

12 You'll hear from the person whom Manafort called to
13 get Calk that interview. He will tell you that Calk wasn't
14 qualified for the job, that he only got the interview because
15 of Manafort, and that Calk never said anything about lending
16 millions of dollars to Manafort.

17 You'll hear from bank employees who worked on the
18 loan. They'll tell you that these loans were different than
19 any other loan at the bank, that no matter what went wrong, no
20 matter the problem, they kept going because they knew that
21 Calk, the CEO of the bank, wanted these loans to close no
22 matter what.

23 Now, some of these banker witnesses have court-ordered
24 immunity. That means they can testify here about what they did
25 as part of the defendant's crimes, and they can't be prosecuted

L6NKCAL2

Opening - Ms. Rothman

1 as long as they tell the truth. So, listen carefully to their
2 testimony.

3 Ask yourself if it lines up with the other evidence
4 that you're going to see in this trial, evidence like the
5 defendant's own words in emails and text messages. You'll see
6 the email where Calk agreed to give Manafort that extra million
7 dollars and told the loan officer, quote, "We will close on
8 time." You'll see an email where Calk, the CEO of a bank, was
9 literally checking to make sure Manafort has signed his name on
10 all the right lines so the loan can close. You'll see lists,
11 upon lists, upon lists of government jobs that Calk wanted.
12 You'll see those text messages from election night that I
13 already described.

14 These emails and text messages will make clear to you
15 that Calk was pushing these loans forward and was getting
16 benefits from Manafort in return. You'll see a record of the
17 defendant's phone calls at key critical moments - calls with
18 Manafort, calls with the loan officer, calls with a person on
19 the transition team getting him that interview at Trump Tower.
20 The pattern and timing of these calls will make it clear to you
21 this was a corrupt exchange, a quid pro quo, between Manafort
22 and Calk. You'll see the actual notebooks the loan officer
23 kept at the time. These notebooks track the life of the loan
24 from Manafort's first ask for Calk's resume, to Calk's request
25 that the loan officer contact Manafort and see if he was in the

L6NKCAL2

Opening - Ms. Rothman

1 running for Secretary of the Treasury, to those words from Calk
2 that Manafort was, quote, "influential with other people and a
3 few other situations on hand."

4 Now, ladies and gentlemen, the evidence will come in
5 piece by piece. No single email or witness can tell you the
6 full story. As I mentioned, you're going to hear from someone
7 who worked at the bank's regulator, and they'll tell you about
8 the meeting they had with Calk when Calk said he didn't want
9 the job in the first place. Now, that person isn't going to
10 tell you that Calk was lying because that person doesn't know.
11 He didn't read the emails in which Calk says his number one
12 desire is to be Secretary of the Army, so he couldn't know.
13 But you'll have these emails, you'll have all the evidence, and
14 once all the evidence comes in, Calk's lies and, more
15 importantly, his guilt will be clear.

16 Let me finally say a word about the charges in this
17 case. Calk has been charged with bank bribery and conspiracy.
18 The Court has given you instructions on the law, and I'm not
19 going to repeat those elements here. I just want to highlight
20 what is at the core of these crimes - a corrupt exchange, a
21 quid pro quo, that Calk solicited and accepted something of
22 value with the intent to be influenced in connection with bank
23 loans. You'll be asked to decide whether there was a
24 connection between the loans that Calk was giving out and the
25 benefits and favors he was getting from Manafort. And as you

L6NKCAL2

1 listen to the evidence, as you see it all come in, you will
2 know that that is exactly what happened here – that this was
3 loans for influence, this for that.

4 Ladies and gentlemen, this is an important case. It's
5 important to the defendant for obvious reasons. It's important
6 to the government, too, because it is a crime when bank CEOs
7 take bribes and try to buy themselves fame, prestige, and
8 power.

9 At the end of this trial, you will see there is
10 overwhelming evidence that the defendant is guilty. Between
11 now and then, I'm going to ask you to do three things: First,
12 pay careful attention to the evidence; second, follow Judge
13 Schofield's instructions on the law; and, third, use your
14 common sense, the same common sense you use in your everyday
15 lives as New Yorkers. If you do those three things, you will
16 reach the only verdict that is consistent with the evidence and
17 the law – that the defendant is guilty.

18 THE COURT: Okay. Thank you.

19 So, ladies and gentlemen, we're going to take our
20 ten-minute break now, and then we'll have the defense opening.
21 I'll just remind you not to talk about the case. Mr. Street
22 can direct you back to the jury room.

23 (Jury not present)

24 THE COURT: We're adjourned for ten minutes.

25 (Recess)

L6NKCAL2

1 THE COURT: There's something that I should have done
2 earlier, but I'm going to do it now. I wanted to allocute
3 Mr. Calk on the plea offer, if there was one.

4 So, my question to the government is: Was there an
5 offer, a plea offer, made?

6 MR. MONTELEONI: No, your Honor, the government has
7 never made a plea offer to Mr. Calk.

8 THE COURT: All right. I didn't neglect to do
9 anything.

10 (Pause)

11 (Continued on next page)

L6NKCAL2

Opening - Mr. Schoeman

1 (Jury present)

2 THE COURT: You may be seated.

3 Ladies and gentlemen, there's one thing I wanted to
4 explain to you. Everybody is standing up when you come in, and
5 the reason is out of respect for you, the jury. And so that's
6 why we're standing, not for any other reason.

7 If the defense would like to do an opening statement,
8 now would be the time.

9 MR. SCHOEMAN: Yes, your Honor. Thank you.

10 Good afternoon. The question in this case is whether
11 Steve Calk thought that he was doing anything wrong by making
12 loans to Paul Manafort, and based on the evidence that you're
13 going to hear in this case, the answer, in this case, is going
14 to be no. No, he didn't think he was doing anything wrong. So
15 let's talk about the evidence in this case.

16 The evidence will show that Mr. Calk's bank made loans
17 to Paul Manafort. Those loans were unanimously approved by the
18 bank's loan committee, the loan committee's approval was
19 subject to the approval of the underwriting department, and the
20 underwriting department approved the loans. Those are facts
21 that you will see in this case.

22 The evidence in this case will also show that Steve
23 Calk volunteered for a position on the 2016 Trump Campaign, he
24 volunteered for an unpaid position, and he applied for a
25 government job that he did not get. And those are facts that

L6NKCAL2

Opening - Mr. Schoeman

1 you're going to see in this case.

2 Now, the prosecution in this case is going to spend a
3 lot of time running away from those basic facts, distracting
4 from those basic facts, and they will try to substitute
5 hindsight, speculation, and other people's opinions for the
6 facts. But the facts in this case will show that Steve Calk
7 believed that the loans to Paul Manafort were great loans for
8 his bank, big, profitable loans, with tons of collateral to
9 protect the bank's interests. And the facts will show that
10 Mr. Calk sincerely wanted to serve his country, to do public
11 service, and, yes, yes, he got some help and some advice from
12 Paul Manafort. But what matters in this case is that the facts
13 will show that Steve Calk didn't think he was doing anything
14 wrong. He didn't think he was doing anything corrupt because
15 he thought these were great loans for his bank. And for Steve
16 Calk, making great loans for your bank, it's not bad, it's not
17 wrong, it's not corrupt, it's not evil, it's not a crime.

18 As you've heard, my name is Paul Schoeman. Together
19 with my colleagues, Darren LaVerne, Jeremy Margolis, Ray
20 McLeod, Michelle Ben-David, we have the great privilege and
21 responsibility of representing Mr. Calk in this case. And like
22 all of you, he's got to wear a mask during the trial, but
23 please, please don't forget that underneath that mask, there's
24 a real human being.

25 Now I'm going to spend a few minutes talking to you

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Opening - Mr. Schoeman

1 about what the evidence in this case is going to show. It's
2 going to show that Mr. Calk is a self-made man, he's totally
3 dedicated to the success of his bank. The bank is called the
4 Federal Savings Bank. The bank is Mr. Calk's brainchild and
5 his baby. Mr. Calk and his brother, they bought a small bank,
6 and they renamed it the Federal Savings Bank, and they grew it
7 from next to nothing into a big profitable business worth
8 millions of dollars.

9 Now, look, it's a small bank, but it's one of the most
10 profitable banks for its size in the country, and Mr. Calk was
11 the chairman of the bank, and he was the CEO, and he owned the
12 majority stake in the holding company that owned the bank, and
13 his brother, John, owned most of the rest of the holding
14 company. So, together, the Calk brothers owned 97 percent of
15 the holding company that owned the bank.

16 Now, you're also going to see in this case that
17 Mr. Calk, not only does he love his bank, he loves the U.S.
18 military. He went to a military prep school, he was an ROTC in
19 college, training to be an army reserve officer, he went to
20 flight school to learn to fly combat helicopters, and he was in
21 the army reserves, and he was honorably discharged with the
22 rank of captain.

23 Now, let's be clear - he was not a general, he was not
24 a war hero, nothing like that, he never saw combat, but he
25 learned to love the military, and he made the military a part

L6NKCAL2

Opening - Mr. Schoeman

1 of his life. So how did he do that? Well, one thing he did is
2 he focused his bank on helping veterans. Mr. Calk and his
3 brother, John, are both veterans, and they asked former
4 generals, retired generals, from the military to serve on their
5 board of directors, and they gave jobs to veterans in the bank,
6 and they focused some of the bank's lending programs on helping
7 veterans and their families get mortgages, and he even served
8 on the board of a charity in the Chicago area that supports
9 military families.

10 So, how did we wind up here, here? Here's what you're
11 going to learn from the evidence in this case:

12 In April, not July, as the prosecution said, but in
13 April, Paul Manafort was introduced to a mortgage salesman in
14 Mr. Calk's bank named Dennis Raico, and Manafort and his
15 son-in-law were looking for a construction loan on a big
16 project in lower Manhattan not too far from here. And as a
17 salesman, as you heard, Raico worked on commission, so a big
18 customer with a big project would mean a big commission for
19 Raico. So Raico described Manafort in the most glowing terms.
20 And at that time, to all appearances, Manafort was a rock star
21 in the world of politics. He appeared to be a very wealthy and
22 successful man, and he had lots of real estate that he wanted
23 to refinance with the bank and do lots of deals that would make
24 Mr. Calk's bank a lot of money. That's the picture that the
25 salesman, Dennis Raico, painted of Paul Manafort back in April

L6NKCAL2

Opening - Mr. Schoeman

1 of 2016.

2 Now, you all know, or you're going to see, that Paul
3 Manafort was committing fraud on the bank. He submitted false
4 financial statements. He was not nearly as wealthy or
5 successful as he pretended to be. But Steve Calk didn't know
6 that, not based on what he was told.

7 So here's the email in April that Mr. Raico sent to
8 Mr. Calk and others at the bank describing Mr. Manafort. He
9 writes: "Paul Manafort" -- this is in April. "Paul Manafort
10 is the most recent presidential campaign manager for Donald
11 Trump. Previously, he was the campaign manager and advisor for
12 Ford," President Ford, "Reagan," President Reagan, "Bush,"
13 President Bush, "and Dole," who was someone who ran for
14 president. "Paul's self-employed consulting business over the
15 past 30 years has served him well. His income average over the
16 past three years has been 3.3 million dollars annually and his
17 2015 P&L stipulates \$5 million. Paul has in excess of
18 \$10 million in liquid assets, another 1 point plus million in
19 an IRA, and a middle credit score of 729," which you'll come to
20 learn is a good credit score, "and Paul's personal real estate
21 holdings listed on the application are approximately
22 \$9.2 million owned free and clear."

23 And that's the way that Dennis Raico introduced Paul
24 Manafort to Steve Calk, and that's exactly the kind of big
25 wealthy customer that Steve Calk would want for his bank. Now,

L6NKCAL2

Opening - Mr. Schoeman

1 that first project in April, that did not progress, but the
2 salesman, Dennis Raico, he kept in touch with Manafort and
3 Manafort's son-in-law, and they came back with a new proposal
4 in July. That's the one you heard about. It was for a house
5 in Los Angeles. It was a much smaller, simpler project than
6 the Manhattan project, and as far as Mr. Calk knew,
7 Mr. Manafort was still a super star, still super wealthy, still
8 super successful, still rich, and still had excellent credit.
9 And the bank's loan committee, the bank's loan committee,
10 conditionally approved, in July, the loan.

11 Now, there are two critical things that you need to
12 understand about that conditional approval in July. First, the
13 approval of the loan committee was, and must be, unanimous; all
14 three members of the committee have to agree. There are three
15 members - Mr. Calk, who's the CEO, the president of the bank,
16 and the chief operating officer of the bank. They have to
17 agree. Mr. Calk cannot approve a loan by himself.

18 Now, the second thing you have to understand about the
19 conditional approval is that it is subject to underwriting.
20 And underwriting isn't just some formality, as the prosecution
21 suggested. Underwriting is the work that the bank does to see
22 whether somebody qualifies for a loan. It's where they look at
23 all of the tax returns and paperwork and bank records and
24 appraisals. So the loan committee's approval takes place
25 before the underwriting. Mr. Calk and the rest of the loan

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Opening - Mr. Schoeman

1 committee, they just approve the structure of the deal, but
2 they approve it subject to underwriting. And I'll show you
3 what that approval looks like.

4 This is an email from the president of the bank,
5 Mr. Ubarri, who's a member of the loan committee. It includes
6 Mr. Calk and Mr. Norini, the other member of the loan
7 committee, the salesman, Raico, and the top members of the
8 underwriting department, and it says: "Dennis" - this is from
9 the bank's president - "the credit committee approved this loan
10 subject to underwriting," and then it lays out the terms of the
11 loan.

12 And you're going to learn that these are the bank's
13 standard terms for a loan of this type. It's a special kind of
14 loan program that they had at the bank - 7-1/4 percent
15 interest, 2 percent origination points, meaning a 2 percent fee
16 upfront. You're going to learn that these are very favorable
17 terms for the bank. This is not a sweetheart deal. They
18 didn't go easy on Paul Manafort at all. They made him pay all
19 kinds of fees and expenses throughout his entire time taking
20 out loans from the bank.

21 But the key provision here is the one on the bottom,
22 which is that the bank, in addition, in addition to using the
23 Los Angeles property as collateral, the bank was going to put a
24 lien on Mr. Manafort's primary residence, a luxury condo in
25 Virginia, and, that way, if Manafort didn't pay back the loans,

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Opening - Mr. Schoeman

1 then the bank would be able to take the California property and
2 his home in Virginia, and sell them to pay off the loans.
3 That's how the bank protected itself.

4 Now, that conditional approval that we've just looked
5 at, that happens at the end of July 2016. And then two and a
6 half months go by, two and a half months, and during that time,
7 the underwriting department and the sales department, they
8 gather up all the information that you need to have to decide
9 whether Paul Manafort is creditworthy with respect to a loan.
10 They gather up tax returns and bank statements and real estate
11 appraisals and profit and loss statements, all this paperwork
12 that they gather up and they review for the underwriting. And
13 there's a lot that goes on in this time period, there's a lot
14 of back-and-forth, a lot. But Mr. Calk is not involved with
15 most of that because he is not an underwriter. That's going on
16 amongst the underwriters.

17 Now, you're going to see that there are issues that
18 come up during the course of the underwriting. But, for the
19 most part, they're not shared with Mr. Calk. There's a lot
20 that actually goes on behind his back. There's a lot he isn't
21 told. You're going to see a lot of emails about underwriting
22 issues that are not forwarded to Mr. Calk, they're not sent to
23 Mr. Calk. There are memos that are written; they are not
24 forwarded to Mr. Calk, they are not sent to Mr. Calk.

25 And, in particular, you're going to see in the course

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Opening - Mr. Schoeman

1 of this case that the salesman, Dennis Raico, who you heard
2 works on commission, he's highly motivated to push these loans
3 through. He wants the loans to go through so he can get a
4 commission, so he does not share with Mr. Calk, and sometimes
5 he doesn't even share with the underwriting department, any
6 negative information about Paul Manafort. He always, always,
7 always, puts a positive spin on Manafort and Manafort's
8 finances because he wants the loan to go through and he wants
9 his commission.

10 Now, one thing you will see, one thing you will see is
11 that Mr. Calk, for his part, he repeatedly, repeatedly denies
12 requests to lighten up on the terms of the loan, to go easy.
13 He never goes easy on Paul Manafort. In fact, he consistently
14 makes the loan terms tougher.

15 One thing he does is he requires at one point, you'll
16 see, he requires Manafort to post as additional property a
17 mansion that Mr. and Mrs. Manafort owned in the Hamptons on
18 Long Island. It's a big beautiful property with swimming
19 pools, tennis courts, and Mrs. Manafort's -- Mr. Calk is told
20 that Mr. Manafort's wife considers this her treasure. She does
21 not want to post the mansion in the Hamptons as collateral, but
22 Mr. Calk insists on it, and it gets posted as collateral,
23 collateral meaning it's what the bank will take if the
24 Manaforts don't pay back the loan.

25 So then what happens? Well, the bank does so much, so

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Opening - Mr. Schoeman

1 much underwriting and due diligence on this loan, that the loan
2 isn't even ready to close until October, October 19th. The
3 conditional approval was back at the end of July. It's two and
4 a half months before they can even schedule the closing.

5 (Continued on next page)

L6NMCAL3

Opening - Mr. Schoeman

1 MR. SCHOEMAN: Then what? When that day comes, when
2 October 19 comes and it's time to close the loan, the one that
3 Mr. Calk approves, subject to the underwriting, Mr. Manafort
4 takes a close look at the terms of that loan and he says, no
5 thank you. He says no thank you. I don't want that loan. He
6 looks at the loan that requires the mansion that's the wife's
7 treasure in Long Island, the Virginia condo, the L.A. property,
8 and he says that's too expensive and fees and taxes alone are
9 too high and he says no thank you to that. He doesn't want it.

10 So Mr. Manafort proposes a new deal, a new structure.
11 Then what happens? You are going to see that the salesman, the
12 salesman, that proposal was made to the salesman. The
13 salesman, Dennis Raico, has an idea. He thinks that another
14 bank, a bank called the Bank of the Internet, B of I, Bank of
15 the Internet, would be interested in exactly that kind of thing
16 that Manafort was proposing.

17 The idea that Raico has is that the Federal Savings
18 Bank, Mr. Calk's bank, will originate the loan, get a fee, a
19 commission from Manafort, and then sell it immediately to Bank
20 of the Internet and get another fee and commission. Just make
21 a bunch of money on the fees and have Bank of the Internet own
22 the loan. That's Raico's idea.

23 And this is good. It's good for the bank because they
24 get the fees. It's great for Raico because he gets commission
25 based on the fees.

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Opening - Mr. Schoeman

1 So For the next few weeks Mr. Raico, he works like a
2 mad man furiously trying to package up this deal for Bank of
3 the Internet and he tells everyone, he says Bank of the
4 Internet will approve it. Don't worry.

5 That's critical of Steve Calk's state of mind.
6 Because Raico is saying -- he is putting a positive spin on
7 anything. He is saying Bank of the Internet is going to
8 approve it and this is great. One of the things that Raico
9 says is, Bank of the Internet, they are on the verge, they are
10 going to approve it any day now.

11 So the loan, the loan is actually supposed to close
12 before Election Day. The only reason -- first of all, there is
13 the loan in October, it doesn't -- Manafort says no. The
14 second loan -- the new proposal is supposed to close before
15 Election Day but Bank of the Internet, they don't get the
16 approval done in time.

17 So, yes, Election Day comes, but it doesn't matter.
18 They didn't change anything. They are still trying to sell
19 this loan to Bank of the Internet. They are still -- let me
20 show you another exhibit. This is an e-mail from Javier
21 Ubarri, president of the bank, to Steve Calk -- it's to Raico,
22 copy to Calk, but it's addressed Steve. Here is where we are
23 with Manafort. This is Friday, November 11, a few days after
24 the election.

25 He says here we are and he lays out three options.

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Opening - Mr. Schoeman

1 This is coming from the president of the bank.

2 1, Bank of the Internet. I think this is the
3 preferred route. Supposedly, the deal is in the desk of the
4 senior credit officer for signature since Wednesday. Signature
5 since Wednesday because Raico has been telling everyone, any
6 day now, any day now, any day now. Option 2, the original deal
7 that Manafort said no to. And option 3 is that the bank would
8 do the loan in its own portfolio. It would do the loan itself
9 before getting approval from Bank of the Internet.

10 Mr. Ubarri, president of the bank, updating Steve Calk
11 says, we can do any of these options. That's what Mr. Calk was
12 told. And what they end up doing, what they end up doing is
13 option 3. But the plan is the same. Do the loan in the bank's
14 portfolio and then package it up, sell it to Bank of the
15 Internet so they can do another big profitable loan for
16 Manafort.

17 And that second loan, that second loan is not for a
18 brownstone in Brooklyn. For Steve Calk, you will see that this
19 looks like another great profitable loan. I'll show you the
20 term sheet for the loan. This is the bank's term sheet. The
21 borrowers are Mr. and Mrs. Manafort. You see the same high
22 interest rate, 7 and a quarter percent. The 2 percent fee up
23 front. \$5,000 application fee because they never go easy on
24 Manafort on the fee. At the bottom you see the borrowers were
25 pledged a deposit account with the Federal Savings Bank that

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Opening - Mr. Schoeman

1 must maintain a minimum balance of \$2.5 million. You will see
2 that that's collateral for the loan. If the Manafort's don't
3 pay on that loan, not only does the bank take the Brooklyn
4 property through foreclosure, but they can take the cash. No
5 foreclosure, no complicating proceedings, no risk. Just take
6 the cash. So cash collateral is the best kind of collateral
7 that a bank can have and it is the collateral that they took in
8 this loan.

9 Once again, this loan was unanimously approved by the
10 bank's underwriting -- by the bank's loan committee, subject to
11 underwriting, and the underwriters approved the loan. Because
12 the underwriting department gets to decide whether a loan goes
13 through. So the underwriting is done, the underwriting
14 department approves the loan. The loan gets made in January of
15 2017.

16 By the middle of 2017, January 2017, Mr. Calk's bank
17 has made two loans to Paul Manafort. The second loan actually
18 has two pieces. Think of it as two loans that are unanimously
19 approved by the loan committee. The terms of the loan are very
20 favorable to the bank. The value of the collateral far exceeds
21 the amount of the loans. They never go easy on the fees. And
22 the underwriting department approves the loans.

23 The underwriting department spent months. Remember,
24 they first meet Manafort back in April. The loan proposal that
25 they first approve is in July. The first loan doesn't goes

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Opening - Mr. Schoeman

1 until November. The second loan doesn't close until January.
2 They spent a lot of time underwriting these loans. And no one,
3 no one tells Steve Calk these aren't good loans for the bank.
4 No one tells him. So there is no reason that Steve Calk
5 wouldn't think that these are great loans for his bank. There
6 is no reason he wouldn't want to do big, profitable high
7 interest rate loans like these.

8 Let's be clear about something. The prosecution is
9 going to call some witnesses who were involved with the
10 underwriting of the loans, and they are going to get deep in
11 the weeds of underwriting. You may hear about regulations
12 relating to underwriting. You'll see that the underwriters
13 raised questions about these loans, no doubt about it. And
14 some people may say now that they never liked those loans.

15 But the issues that were raised by the underwriters in
16 e-mails and memos that were not forwarded to Steve Calk don't
17 tell you anything about what Mr. Calk did. There are e-mails
18 and memos. But look to see what's forwarded to Steve Calk.
19 Look to see what he receives. You are going to learn in this
20 case that none of the underwriters even talked to Steve Calk
21 about these loans. So, yes, look. Definitely, Mr. Calk was
22 involved with these loans. The evidence will show that these
23 were going to be the biggest loans, the most profitable loans
24 that the bank had done up to this point in time. And Paul
25 Manafort seemed like a superstar. He seemed like a very

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Opening - Mr. Schoeman

1 important customer. He was the kind of high-profile customer
2 that Mr. Calk would want to give personal attention to.

3 Mr. Calk wanted to make big profitable loans to Paul
4 Manafort. As long as those loans are approved by the loan
5 committee and the underwriting department signs off, there is
6 no reason why he wouldn't want to make those loans. The
7 evidence in this case will show a cold hard fact that the
8 underwriting department approved both of these loans and that's
9 a very inconvenient truth for the prosecution in this case.
10 These are the loan memos. These are the loan memos from the
11 underwriting department and you are going to see these memos
12 later in the case, but these memos are signed by the lead
13 underwriter for the bank. The one on the left is for the first
14 loan and the one on the right is for the second loan and that
15 is the signature of the chief underwriter of the bank approving
16 the loans.

17 Let me tell you right now, in hindsight, in hindsight,
18 looking back on it, the underwriting on these loans was not
19 great. In hindsight, the underwriters made mistakes and they
20 overlooked things. And Manafort, remember Manafort committed
21 fraud. He is providing false statements and false financial
22 documents that the underwriters didn't pick up on. More than
23 that, Raico, the salesman, the salesman Raico, he is feeding
24 everybody this positive information, but he's hiding facts from
25 the underwriting department. He is hiding facts from Steve

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Opening - Mr. Schoeman

1 Calk. You are going to see this from the evidence. You are
2 going see a lot of things that Steve Calk did not know at the
3 time.

4 We talked about the loans. As I said earlier, trying
5 to make big profitable loans was one of the things that the
6 evidence in this case will show Steve Calk did.

7 What was the other? It involves the presidential
8 election. As you all remember, 2016 was a presidential
9 election year and Steve Calk, like a lot of people, was
10 interested in the election and in the issues and he wanted to
11 be involved. And Paul Manafort asked Steve Calk whether he
12 would be willing to serve, whether Mr. Calk would have been
13 willing to volunteer as a member of Donald Trump's national
14 economic advisory council. It's a volunteer position. No
15 salary. No expenses paid. No reimbursement for anything of
16 any kind. Would you be willing to serve as a volunteer on the
17 campaign?

18 And Mr. Calk said yes, he would be willing to serve,
19 and he worked hard. He worked hard in the campaign of 2016 in
20 the fall doing television appearances and serving as a
21 surrogate for the Trump campaign. He did that without being
22 paid, without any reimbursement for expenses. He talked about
23 the issues that he cared about, like the economy. He was a
24 campaign surrogate in the fall of 2016.

25 And then, as you know, and you were reminded,

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Opening - Mr. Schoeman

1 something surprising happened on Election Day 2016. Donald
2 Trump won the 2016 election and the evidence will show that
3 Mr. Calk wanted to serve his country. He was excited. He had
4 worked hard on the campaign. He had been loyal to Donald Trump
5 and he made up a wish list, a wish list of jobs that he wanted,
6 that he would be thrilled. He would be thrilled and honored to
7 have these jobs.

8 But what he was most interested in, as you heard, was
9 a job that would help him support the troops. It was a job
10 that would him support the U.S. military, the job of secretary
11 of the army, which may not be a job you have heard a lot about
12 before, but it's not a military position. It's a civilian
13 position. You don't wear a uniform. But you're a senior
14 person in the Pentagon looking out for the welfare of the
15 people in the army.

16 Mr. Calk, based on his background, really loves the
17 military, and he knows how to run a big organization because he
18 runs a bank. He didn't certainly didn't need a government job
19 for the money. His bank was a very profitable bank. But he
20 wanted to serve his country.

21 So he reached out. He reached out to lots of people
22 that he knew for advice and help, for connections and
23 networking about how to get involved with the Trump
24 Administration. He reached out to generals, including the
25 generals who served on his board of directors at the bank. He

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Opening - Mr. Schoeman

1 reached out to other people. He reached out to people that he
2 had met on the campaign.

3 And one of the people that he reached out to was Paul
4 Manafort. Absolutely he did. He reached out to Paul Manafort
5 because Paul Manafort had become a friend and the two men liked
6 each other and they talked on the phone all the time, and Steve
7 Calk sought out Paul Manafort's advice.

8 Now, Manafort wasn't even part of the campaign at that
9 time. As you heard, he had left the campaign a couple of
10 months earlier. He wasn't part of the transition team. But
11 Paul Manafort, as you saw from the e-mail, had served on
12 campaigns for numerous people who went on to become President
13 of the United States, and he knew of something about how to get
14 a job in the administration. Mr. Calk sought his advice,
15 absolutely. He sought Mr. Manafort's advice in applying for a
16 job in the administration. And Manafort put in a good word for
17 Mr. Calk, and Mr. Calk prepared an application and he was given
18 an interview. Not even for secretary of the army, but actually
19 for under secretary of the army, not secretary of the army;
20 under secretary of the army. He flew to New York, went to
21 Trump Tower, interviewed to be under secretary of the army and
22 did not get the job. Didn't get any job. Got nothing. So
23 Mr. Calk volunteered on a political campaign, worked hard,
24 applied for a job that he did not get.

25 So one thing this case is definitely not about is

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Opening - Mr. Schoeman

1 Steve Calk getting any money personally. He didn't get a penny
2 for himself. He didn't get a salary. Didn't get his expenses
3 reimbursed. Spent his own money. Steve Calk did not receive
4 anything that he would ever think was a bribe.

5 What matters in this case is Steve Calk's intent and
6 whether he thought, whether he thought he was doing anything
7 wrong. The evidence in this case will show that he thought
8 what he was doing was right. He was doing the right thing by
9 making big profitable loans for his bank and trying, trying to
10 get a job in government service.

11 Every time the prosecution in this case starts asking
12 witnesses about what they thought about the loans or what they
13 thought about Mr. Calk applying for the job or what they
14 thought about anything else, listen to whether those thoughts
15 were shared with Mr. Calk. If they weren't shared with
16 Mr. Calk, if it's just something that somebody says behind his
17 back or thinks behind his back, then it won't tell you anything
18 about what Steve Calk knew, what he intended.

19 You will see, from the evidence in this case, that
20 Steve Calk never intended to take a bribe. Remember, you are
21 going to see the evidence in this case that the bribery theory
22 doesn't even make any sense because remember what the bribe is
23 supposed to be. The bribe is what Mr. Manafort gave Mr. Calk.
24 What did Manafort give Calk? A volunteer position on a
25 campaign and help and advice applying for a job that he did not

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Opening - Mr. Schoeman

1 get.

2 And the prosecution theory in this case is that was so
3 valuable to Mr. Calk that he put \$16 million of his own bank's
4 money at risk on a corrupt loan. The evidence in this case,
5 when you hear more about these loans, is going to show you that
6 that doesn't make any sense.

7 What you will see from the evidence in this case is
8 that Steve Calk loved these loans. He thought they were good
9 for his bank based on what he was told and what he knew.

10 Let me say one more thing about what this case is not
11 about. This case is not about partisan politics. The name
12 Donald Trump is going to come up during this trial. Some
13 people like him, some people don't. Don't let that influence
14 you in this case. Don't let it influence you as you listen to
15 the evidence. Yes. In 2016, that seems like such a long time
16 ago, Mr. Calk supported Donald Trump.

17 But don't let political partisanship matter in this
18 case. It doesn't matter. We are asking you to put politics
19 aside. Focus on the facts of this case and we trust that you
20 will do that.

21 We also trust that you understand Judge Schofield's
22 instructions that Mr. Calk is presumed innocent. He doesn't
23 have to prove anything. We don't have to prove anything. In
24 the United States of America it's the prosecution's burden to
25 prove its case by competent evidence beyond a reasonable doubt.

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Opening - Mr. Schoeman

1 That's the protection that all of us have in this country. And
2 anything less than proof beyond a reasonable doubt is not going
3 to be good enough, not in this courtroom, not in this trial,
4 not in this country, not in a criminal case.

5 At the end of the case, I am going to have one last
6 chance to speak with you like this. I am going to show you
7 from the evidence and the lack of evidence that the prosecution
8 has not met its burden.

9 I will show you that what they have is a theory, a
10 theory that is based on hindsight, other people's opinions, and
11 speculation, but not the facts.

12 Then you will have an extraordinary responsibility.
13 You will have to review the evidence carefully and hold the
14 prosecution to its burden.

15 I'm confident that if we do our jobs, you will see
16 from the evidence and from the lack of evidence that Mr. Calk
17 did not commit a crime. He did not make a corrupt deal. You
18 will see that he is not guilty of these charges and you will
19 return a verdict of not guilty. Thank you.

20 THE COURT: The government will call its first
21 witness.

22 MR. SCOTTEN: Thank you, your Honor. The government
23 calls Blake Paulson.

24 THE COURT: Ladies and gentlemen, I wanted to give you
25 a limiting instruction. You are about to hear testimony about

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Paulson - Direct

1 an employee of the Office of the Comptroller of Currency, or
2 the OCC, regarding the OCC and its regulation of the banking
3 industry.

4 This testimony is admissible to provide you with
5 background, to allow you to understand this witness' role in
6 the events at issue, and to allow you to interpret other
7 evidence in the case.

8 You are not to infer from this testimony that the OCC
9 does or does not have any particular view of the loans in
10 question or of Mr. Calk, and I further instruct you that any
11 such view would not be relevant in this case.

12 You may proceed.

13 BLAKE PAULSON,

14 called as a witness by the government,

15 having been duly sworn, testified as follows:

16 THE COURT: Would you talk right into the mic as
17 closely as possible, just because it's very hard to hear in
18 here.

19 THE WITNESS: Is that better?

20 THE COURT: Yes.

21 DIRECT EXAMINATION

22 BY MR. SCOTTEN:

23 Q. Good afternoon. Can you hear me OK?

24 A. Yes, I can.

25 Q. Mr. Paulson, how old are you?

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Paulson - Direct

1 A. Fifty-six.

2 Q. How far did you go in school?

3 A. I have a bachelor's degree, college.

4 Q. In what? Where did you go to school?

5 A. Business administration from the University of South
6 Dakota.

7 Q. I know the instruction gave it away, but where do you work?

8 A. The comptroller currency, also known as the OCC.

9 Q. Just briefly, what is the OCC?

10 A. The OCC is a bureau of the U.S. Treasury department
11 responsible for overseeing the supervision of the federal
12 banking system.

13 Q. Some of the jurors may have heard of the FDIC. Is there a
14 relationship between these two agencies?

15 A. Yes. The OCC is responsible for federally chartered banks.
16 That's the OCC. The FDIC is responsible for some state charter
17 banks. The FDIC also is responsible for the Deposit Insurance
18 Fund, which insures deposits in all insured banks.

19 Q. Including the banks that the OCC regulates?

20 A. Yes.

21 THE COURT: Mr. Scotten, apologies for the
22 interruption, but I'm having a little trouble hearing you. If
23 there is any way -- I don't know if you can stand it up more or
24 get closer somehow. I can't turn the volume up any higher on
25 your mic.

L6NMCAL3

Paulson - Direct

1 MR. SCOTTEN: How is this, your Honor?

2 THE COURT: Much better, your Honor.

3 MR. SCOTTEN: Feels oddly loud in here.

4 THE COURT: I'm sure. In that little box it does.

5 Q. Mr. Paulson, what does the OCC do in terms of regulation?

6 What are the goals of its regulation?

7 A. So our mission is to ensure the safety and soundness of the
8 federal banking system and ensure fair access to credit and
9 fair treatment of customers.

10 Q. Can you explain what you mean by safety and soundness.

11 A. Right. I will put it in two kind of categories. One is
12 evaluating the conditions of the banks that we supervise in
13 determining that they are in at least satisfactory condition,
14 and the other significant piece is ensuring to have appropriate
15 risk management to manage the risks of their bank.

16 Q. How long have you been at the OCC?

17 A. Thirty-four years.

18 Q. How did you start at the OCC?

19 A. I started as an entry-level bank examiner examining
20 community banks in the Midwest.

21 Q. As an examiner, how do you know what to look for?

22 A. So the OCC has an extensive set of handbooks that provide
23 background guidance, information about appropriate bank
24 practices. And included in those handbooks are also
25 examination procedures that examiners follow when they are

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Paulson - Direct

1 examining a bank.

2 Q. Do those handbooks also contain regulations that are put in
3 the banks?

4 A. Yes. They would address the regulation appropriate or
5 relevant to that section of the handbook. So that handbook was
6 talking about liquidity. It would include relevant regulations
7 or references to relevant regulations about liquidity.

8 Q. Are these handbooks published?

9 A. Yes, they are published, available to the public on the OCC
10 website.

11 Q. Does the OCC do anything in particular to make sure the
12 bank and bank officers have them?

13 A. Yes. Any time we update a handbook, we issue a bulletin.
14 Think of it as a kind of a cover letter that explains whatever
15 has changed since the last update, and that would include a
16 link to the full handbook.

17 Q. I'm informed that if you are not in this echoing box, it's
18 hard to hear you, Mr. Paulson. If you could speak even closer
19 to the mic.

20 My next question is, 2016 to 2018, what did you do for
21 the OCC?

22 A. So during that time I managed our Chicago office.

23 Q. I want to show you a picture.

24 MR. SCOTTEN: Can you please show 1201.

25 Q. Mr. Paulson, do you recognize this picture?

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Paulson - Direct

1 A. Yes. That's Mr. Calk.

2 Q. How do you recognize Mr. Calk?

3 A. So I met with him one time in July of 2018.

4 Q. At the time you met with him what was the defendant's
5 position?

6 A. He was the CEO and chairman of the board of the Federal
7 Savings Bank.

8 Q. What is the Federal Savings Bank?

9 A. So the Federal Savings Bank is a bank. The OCC supervises
10 generally two kinds of banks, national banks and federal
11 savings associations, also commonly known as savings and loans,
12 and the Federal Savings Bank is a federal savings association.
13 Again, we refer to all of them generally as banks.

14 Q. This meeting, when did it occur?

15 A. It was July of 2018.

16 Q. Where was the meeting held?

17 A. At the Federal Savings Bank headquarters in Chicago.

18 MR. SCOTTEN: Can we please show Government Exhibit
19 1216.

20 Q. Mr. Paulson, do you recognize this picture?

21 A. Yes. This is the building that the meeting was held in.

22 Q. Do you remember where in the building the meeting was held?

23 A. A conference room within the federal savings banks leased
24 space within the building.

25 Q. Who else was present?

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Paulson - Direct

1 A. In addition to CEO Calk, his brother John, who was
2 vice-chairman, President Ubarri, and I believe there are three
3 other members of the senior management team of the bank. That
4 was for the bank. For the OCC it was myself and Ben Lemanski
5 who reported to me at that time.

6 MR. SCOTTEN: Can we please show the witness
7 Government Exhibit 1212.

8 Q. Mr. Paulson, do you recognize this picture?

9 A. Yes. That's President Ubarri.

10 Q. In bank hierarchy, is the president above or below CEO?

11 A. The president would be below the CEO.

12 Q. So Mr. Calk's brother, did they both outrank Mr. Ubarri?

13 A. I believe that is true, yes.

14 Q. At this meeting did some members of the bank side speak
15 more than others?

16 A. So, as I recall, the meeting started out with some comments
17 by Mr. Calk, and then Mr. Ubarri did a fair amount of speaking
18 for the bank, and John Calk made some comments as well. But I
19 don't remember the other members of the management team doing
20 much of the speaking during the meeting.

21 Q. What was the first topic the defendant discussed?

22 A. So the first topic was Mr. Calk strongly denying media
23 reports that he had directed Federal Savings Bank to make loans
24 to Mr. Manafort in exchange for a position in the new
25 administration.

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Paulson - Direct

1 Q. When you spoke with the defendant, did you know whether the
2 bank had in fact made loans to Mr. Manafort?

3 A. I did know that, yes.

4 Q. How did you know that the bank had made loans to
5 Mr. Manafort?

6 A. So the purpose of the meeting was to discuss the
7 conclusions of a recent examination that our examiners had
8 conducted. Within the report of that examination was some
9 discussion of the Manafort-related loans.

10 Q. Did the defendant deny making loans to Paul Manafort?

11 A. No.

12 Q. When you had this meeting, did you know whether the
13 defendant had in fact tried to get a government position?

14 A. I did not know. All I was aware of was the media reports
15 that I did not know what was true and not true.

16 Q. Did the defendant make any statements about whether he had
17 wanted the government position?

18 MR. LaVERNE: Objection to the leading.

19 THE COURT: I'm sorry. Was there an objection? Why
20 hear it.

21 MR. LaVERNE: Yes. Objection to the leading.

22 THE COURT: Sustained.

23 Q. What, if anything, did the defendant say about whether he
24 wanted a government position?

25 A. He strongly denied wanting a position in the government.

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Paulson - Direct

1 Q. Mr. Paulson, would you please take a look at Government
2 Exhibit 701 and 702, which I think you have a binder up there.

3 Mr. Paulson, do you recognize these exhibits?

4 A. Yes.

5 Q. Just in general terms, what are Government Exhibits 701 and
6 702?

7 A. So 701 is the bulletin or, as I referred to earlier, the
8 cover letter communicating update to a handbook, and the
9 handbook is Exhibit 702, which is our handbook on insider
10 activities.

11 MR. SCOTTEN: Can we please show the jury 701. If we
12 could blow up the upper right-hand corner.

13 Q. Mr. Paulson, who is this bulletin sent?

14 A. As all our bulletins are, this is sent to CEOs of the
15 various types of banks that we supervise, as well as the bank
16 department division heads, and then all OCC examining personnel
17 and any other interested parties.

18 Q. How is this guidance sent to bank CEOs?

19 A. So bank CEOs and other senior bank officials are
20 responsible for being up to date on any changes in our guidance
21 and regulations, so they generally subscribe to an e-mailing
22 list, and they would get an e-mail that would include the
23 bulletin and, again, the bulletin would have a link to the
24 handbook.

25 Q. Are there any other steps that the OCC takes to make sure

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Paulson - Direct

1 bank officers are aware of this kind of regulation?

2 A. Yes. We also send quarterly letters to bank CEOs, and
3 those letters would include a list of any guidance that we had
4 issued in the previous quarter, again, with links to all of
5 those guidance. And then through our examination process, when
6 we are examining a bank for those topics, through the process
7 of examining them we would ascertain whether or not the
8 managers in the bank are familiar with any recent guidance.

9 MR. SCOTTEN: Can we please publish Government Exhibit
10 702.

11 Q. Mr. Paulson, what are we looking at here?

12 A. Yes. This is the comptroller's handbook on insider
13 activities.

14 Q. How does it relate to the cover letter we just saw?

15 A. Again, the cover letter would announce that we made updates
16 to this handbook, would provide a summary of what some of those
17 changes were, and then this would be the entire handbook.

18 Q. Are you familiar with a term insider activities?

19 A. Yes.

20 Q. What does it mean?

21 A. So an insider would be an officer of the bank, a director,
22 which is a member of the board of directors. In some cases
23 shareholders of the bank would all be considered insiders.
24 Insider activity would be when those insiders, either
25 personally or their business interests, would have some

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Paulson - Direct

1 business with the bank, loans or deposit accounts or something
2 like that. Those would be considered insider activities.

3 Q. What approach does the OCC take toward insider activities?

4 A. We scrutinize insider activities very closely. While we do
5 risk based supervision of our banks, meaning we don't look at
6 every area of the bank every year, insider activities is
7 something that we look at very regularly in all the banks we
8 supervise.

9 Q. Why did the OCC scrutinize insiders activities closely?

10 A. It's very important that there are not inappropriate
11 insider activities happening that can undermine confidence in
12 the bank if the public believes that insiders are getting
13 beneficial treatment or somehow taking advantage of their
14 position within the bank to the bank's detriment.

15 MR. SCOTTEN: Ms. Coleman, can we please turn to the
16 next page and blow up the very bottom paragraph.

17 Q. Mr. Paulson, I am just going to give the jury a second to
18 read that, and I am going to ask you to summarize it.

19 Mr. Paulson, I believe you testified a moment ago that
20 the defendant was a chairman and CEO at the time you met him?

21 A. Correct.

22 Q. Can you summarize what guidance this paragraph gives to
23 someone in the defendant's position?

24 A. So there is two fiduciary duties that an officer or
25 director owes to the bank. One is the duty of care. This one

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Paulson - Direct

1 is the second one, which is the duty of loyalty, which,
2 briefly, requires that insider of the bank, an officer or
3 director of the bank does not benefit personally from their
4 position in the bank at the bank's expense. In essence, they
5 have to put the bank's interest above their own personal
6 interest.

7 MR. SCOTTEN: Can we please turn to the next page and
8 then blow up the top paragraph there.

9 Q. Again I'll just give the jury a brief moment and then ask
10 you to summarize.

11 Mr. Paulson, what does this tell someone in the
12 defendant's position?

13 A. So it starts out in the sentence that carries over from the
14 previous page and continues on this page about not letting
15 personal interest cloud their judgment with respect to bank
16 business, and then it also talks about conflicts of interest
17 arising from personal business interests and provides direction
18 on their responsibilities, if they have either an actual
19 conflict of interest or an apparent conflict of interest.

20 Q. What is the responsibility of the bank officer who has an
21 actual or apparent conflict of interest?

22 A. So, first of all, they would be required to disclose that
23 conflict to the board of directors, including any relevant
24 information about that conflict, and, secondly, they would need
25 to abstain from any -- taking part in any way or fashion in

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Paulson - Direct

1 that transaction. So it could involve improving it or any of
2 the conditions and would have to completely separate themselves
3 from any decisions that the bank makes regarding a transaction
4 where there is a conflict of interest or an apparent conflict.

5 MR. SCOTTEN: Just going one last paragraph, if you
6 can blow up the next paragraph.

7 Q. I'm not going to ask you about this entire paragraph, but
8 do you see the sentence reading, directors and management must
9 fully disclose any personal interest that they have in matters
10 affecting the banks and must ensure that these business and
11 personal relationships with the bank are always at arm's
12 length?

13 A. Yes.

14 Q. What does the term arm's length mean?

15 A. Arm's length essentially means an insider cannot get terms
16 on any transaction that are better than they would get if they
17 were not an insider. So a similarly situated noninsider, they
18 should get the same terms that the noninsider would get. They
19 could not get any better terms than that.

20 MR. SCOTTEN: We can pull that down and go to the next
21 page, please. If we could highlight the second paragraph
22 beginning 12 C.F.R. 163.200.

23 Q. Mr. Paulson, I am going to ask you to summarize this
24 paragraph.

25 A. Yes. This is a regulation that applies to federal savings

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Paulson - Direct

1 associations that essentially covers the things that we have
2 already talked about about owing a fiduciary duty to the
3 association. In this case the association is synonymous with
4 bank and they must not advance their own interests or their own
5 business, personal or business interests above those of the
6 bank.

7 Q. Do you see anything in this paragraph discussing whether
8 the bank officer or director owns part of the bank?

9 A. No, it does not address that.

10 Q. How, if at all, does it matter if the officer or manager
11 owns part of the bank?

12 A. It does not matter at all.

13 Q. Regardless of who owns the bank, who insures a bank's
14 deposit?

15 A. That's the FDIC, the Federal Deposit Insurance Corporation.

16 Q. Are insider activities the only issue on which the OCC
17 provides guidance to banks?

18 A. No. We provide guidance on all issues that are relevant to
19 banks.

20 Q. Could you please take a look at Government Exhibit 704 and
21 719 in your binder. Tell me if you recognize that.

22 A. Yes, I do.

23 Q. In general terms, what are they?

24 A. So 719 is the bulletin. Again, the cover letter that
25 explains that we had recently updated our comptroller's

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Paulson - Direct

1 handbook on commercial real estate lending, and then Exhibit
2 704 is that handbook on commercial real estate lending.

3 MR. SCOTTEN: Can we please publish 719. If we could
4 blow up the smaller text in the upper right, please.

5 Q. Mr. Paulson, who is this sent to?

6 A. Again, as all our bulletins are, CEOs of all the different
7 types of banks that we supervise, including federal savings
8 associations, their CEOs, department and division heads, all
9 OCC examining personnel and other interested parties
10 essentially to the public.

11 Q. Is there a difference between the other steps OCC takes to
12 ensure CEOs know about this and the steps you've already been
13 discussing today?

14 A. No. They would be the same.

15 MR. SCOTTEN: If we could take that down and please
16 put up 704.

17 Q. What are we looking at here, Mr. Paulson?

18 A. So this is the updated comptroller's handbook on commercial
19 real estate lending.

20 Q. How does this relate to the exhibit we just saw, that cover
21 letter?

22 A. That cover letter is what announces and summarizes the
23 changes that have been made since the previous update to the
24 handbook.

25 Q. What is commercial real estate lending?

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Paulson - Direct

1 A. So commercial real estate lending is a type of commercial
2 lending. It specifically involves various types of commercial
3 real estate. So it could be for the construction of commercial
4 real estate, it could be for long-term investor holding and
5 leasing out commercial real estate, which would include
6 construction of residential real estate, apartment buildings,
7 office buildings, warehouses and those types of properties.

8 Q. Are there circumstances under which a single-family
9 residence construction could qualify as a commercial real
10 estate loan?

11 A. Yes. The construction of a single-family home or a
12 residential real estate property for sale would be a type of
13 commercial real estate loan.

14 MR. SCOTTEN: Can we please turn to the next page.
15 Actually, one more page.

16 Q. Under the bullet analyzing repayment capacity of the
17 borrower, I am going to give the jury a second to take a look
18 at it and then ask you a couple of questions, Mr. Paulson.

19 Mr. Paulson, first question I am going to ask you is,
20 what did this guidance tell someone in defendant's position are
21 the main factors in determining a borrower's ability to repay?

22 A. Yes. So it really does focus on the importance of when
23 evaluating a commercial real estate loan, the bank evaluating
24 that borrower's ability to repay the loan, either through cash
25 flow, essentially lease income, if it's going to be a leased

L6NMCAL3

Paulson - Direct

1 property, or from the sale of the property, if that's the
2 intended source to repay the loan.

3 Q. Now, you see where it says collateral? It's towards the
4 bottom. There is reference to collateral.

5 A. Yes.

6 Q. I am sure most jurors know what this means. Just for
7 clarity, in banking terms, what does that term collateral mean?

8 A. Yes. So collateral is whatever secures the loan. So if we
9 are talking about commercial real estate, it is that real
10 estate property that the borrower pledges to the bank as
11 collateral in case the borrower is not able to repay the loan.

12 Q. Is strong real estate collateral alone reason enough to
13 extend a commercial real estate loan?

14 A. No. The first and foremost thing that should be considered
15 is the borrower's ability to repay the loan. Collateral is
16 typically considered a secondary source of repayment in case
17 the borrower is not able to repay the loan.

18 Q. Are the reasons that commercial real estate collateral
19 cannot be the primary factor in making commercial real estate
20 loans?

21 A. So we have been through a number of cycles. I have in my
22 career. Commercial real estate property values will fluctuate.
23 They will go up and they will go down. And at the time a bank
24 makes a loan secured by commercial real estate, they don't know
25 when they may need to repossess that collateral and sell it.

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Paulson - Direct

1 So they don't know if that would be a good time in the market
2 or a bad time. And typically it's in a down cycle when banks
3 end up repossessing commercial real estate property and needing
4 to sell it. In that case it may no longer be of sufficient
5 value to repay the loan.

6 Q. Are there any concerns with the process and recovery of
7 collateral?

8 A. Yes. So foreclosing on commercial real estate can be
9 timely -- time consuming. Excuse me. It can take two, three,
10 even four years and it's a legal process that a bank has to go
11 through and the bank is not always successful in that legal
12 process in being able to take control of that commercial real
13 estate property and sell it to repay the loan. So there are a
14 number of risks involved with relying on collateral.

15 Q. Mr. Paulson, in your personal experience, how many bank
16 CEOs and chairmen have you met with?

17 A. Well over a hundred.

18 Q. How widespread is the understanding that a commercial real
19 estate collateral loan cannot justify a loan?

20 MR. LaVERNE: Objection, your Honor. Hearsay.

21 THE COURT: Sustained.

22 Q. In your experience, are the OCC's measures to ensure this
23 information is disseminated effective?

24 A. Yes.

25 MR. SCOTTEN: One second, your Honor.

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Paulson - Cross

1 Nothing further, your Honor.

2 THE COURT: Cross.

3 CROSS-EXAMINATION

4 BY MR. LaVERNE:

5 Q. Good afternoon, Mr. Paulson.

6 A. Good afternoon.

7 Q. My name is Darren LaVerne. I'm one of the lawyers for
8 Mr. Calk. If you can't hear me at any time, please just say so
9 and I'll restate the question.

10 A. Sounds good so far.

11 Q. I think on direct I heard you testify that you've been with
12 the OCC for 33 years, is that correct?

13 A. Thirty-four.

14 Q. The OCC is an agency of the U.S. Government, true?

15 A. Correct.

16 Q. Mr. Paulson, you have never actually worked at a bank,
17 true?

18 A. I have never worked for a bank. I have worked in many
19 banks.

20 Q. That's what I mean. Never been employed by a bank?

21 A. Correct.

22 Q. You've never, for example, served on a bank's credit
23 committee, true?

24 A. True.

25 Q. You never served in a bank's underwriting department, true?

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Paulson - Cross

1 A. Correct.

2 Q. You have never worked in the private sector at all, true?

3 A. Not true.

4 Q. Sorry.

5 A. Not in the financial services industry, but prior to, I had
6 a number of jobs as a youth and while I was in college and
7 those kinds of things. But my entire professional career has
8 been with the OCC.

9 Q. Thank you for clarifying.

10 Now, you testified, Mr. Paulson, about a number of
11 rules and regulations when you were being asked questions by
12 Mr. Scotten.

13 Do you remember that?

14 A. Yup.

15 Q. The OCC issues these rules and regulations, true?

16 A. Correct.

17 Q. And they are issued in fact in something called Code of
18 Federal Regulations, true?

19 A. Right.

20 Q. And all of these regulations that Mr. Scotten was asking
21 you about are what we call civil regulations, true?

22 A. Correct.

23 Q. That is, they are not criminal laws, correct?

24 A. Correct.

25 Q. The OCC, Mr. Paulson, doesn't issue criminal rules, true?

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Paulson - Cross

1 A. Correct.

2 Q. Just to be clear, Mr. Paulson, while you were answering Mr.
3 Scotten's questions about some rules and regulations, you,
4 Mr. Paulson, are not a lawyer, correct?

5 A. That's true.

6 Q. Mr. Scotten asked you some questions about something that
7 you testified is called the OCC handbook, right?

8 A. Right.

9 Q. The handbook, as you testified, contains OCC guidance in a
10 number of different matters, true?

11 A. True.

12 Q. And the handbook is published in different sections,
13 correct?

14 A. Correct.

15 Q. Each addressed to a different topic, correct?

16 A. Correct. Yup.

17 Q. I think I heard you testify on direct and say that the
18 number of sections is extensive, true?

19 A. Yes, that's true.

20 Q. Mr. Scotten showed you excerpts, couple of pages from just
21 two of those handbooks, true?

22 A. Right.

23 Q. In fact, Mr. Paulson, by my count, there is something like
24 91 different sections of his handbook, true?

25 A. I have not counted them, but that sounds like a reasonable

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Paulson - Cross

1 number.

2 Q. The handbooks, I think you testified, on liquidity,
3 correct?

4 A. Yes.

5 Q. There is a whole handbook on community bank supervision,
6 correct?

7 A. Correct.

8 Q. There is a handbook on interest rate, correct?

9 A. Yes.

10 Q. Handbook on internal controls, correct?

11 A. Right.

12 Q. Handbook on mortgage banking, correct?

13 A. There is.

14 Q. Many, many more, correct?

15 A. True.

16 Q. Each of these handbooks, Mr. Paulson, can be hundreds of
17 single-spaced pages long, true?

18 A. I believe many of them are over a hundred pages, including
19 the exam or procedures, yes.

20 Q. The government, for example, showed you their Exhibit 704,
21 you recall, which was a two-page excerpt from the commercial
22 real estate lending handbook, true?

23 A. Yes.

24 Q. In fact, that handbook that they showed you the excerpt
25 from is actually over 130 pages long, true?

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Paulson - Cross

1 A. That sounds true, but I have not counted the pages in quite
2 a while.

3 Q. The handbook of insider activities that Mr. Scotten showed
4 you is about 50 pages long, correct?

5 A. I'll take your word for it. I don't know.

6 Q. Now, as you testified, Mr. Paulson, from time to time the
7 OCC issues what are called bulletins relating to these
8 handbooks, true?

9 A. Right.

10 Q. You testified about two bulletins, both of which were
11 issued in 2013, correct?

12 A. Right.

13 Q. That's Government Exhibit 701 and 719, true?

14 A. Yes.

15 Q. Now, those weren't the only two bulletins that were issued
16 in 2013, right?

17 A. That's right.

18 Q. In fact, Mr. Paulson, the OCC in 2013 alone issued
19 something like 20 bulletins, correct?

20 A. I don't know the answer to that, but it seems reasonable.
21 At that time we had recently integrated with the Office of
22 Thrift Supervision, or OTS, who had previously supervised the
23 federal savings associations. We were merging a lot of that
24 guidance together and doing updates to many of our handbooks,
25 so it sounds reasonable that we would have issued that number

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Paulson - Cross

1 during that period of time.

2 Q. You knew back then how many bulletins you were issuing,
3 obviously, correct?

4 A. Sure.

5 Q. Let me show you what I have marked -- this is just for the
6 witness -- Defense Exhibit 1029. Take a look at 1029 just for
7 the witness. See if it refreshes your recollection as to how
8 many bulletins were actually issued in 2013.

9 MR. LaVERNE: We can scroll through the pages or even
10 hand it up to Mr. Paulson, if that's easier, your Honor.

11 Q. You can go more slowly, if you want. I don't want to put
12 you on the spot.

13 A. You can go to the last one and that will tell me how many
14 there were. This is the last one. This is OCC bulletin
15 2013-41, which would indicate we issued 41 bulletins during
16 2013, not all of which would be relevant to every bank that we
17 supervised.

18 Q. And these are on a wide array of topics, true?

19 A. Right.

20 Q. When Mr. Scotten showed you those two bulletins, 701 and
21 719 focused in on the top right corner.

22 MR. LaVERNE: Why don't we put Government Exhibit 719
23 on the screen, just to refresh Mr. Paulson's recollection.

24 Q. Look on the right side of the page. He focused you on the
25 fact that it's addressed to chief executive officers of all

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Paulson - Cross

1 national banks and federal savings associations.

2 You see that?

3 A. Yes.

4 Q. As well as department and division heads and all examining
5 personnel and other interested parties.

6 A. Right.

7 Q. Mr. Paulson, in fact, every single one of the bulletins
8 issued that year was addressed to those same parties, true?

9 A. I believe so, yes.

10 Q. Not just those two?

11 A. Right.

12 Q. Now, one other thing about 719 while we have it on the
13 screen. On the top left it says 5/20/2021.

14 You see that?

15 A. Yup.

16 Q. That's the date that you printed it off the Internet, true?

17 A. I assume that is the case. I didn't print it myself, so I
18 don't know that.

19 Q. But that's last month, correct?

20 A. Right.

21 Q. This isn't the actual e-mail that you say went to Mr. Calk
22 back in 2013, true?

23 A. It does not appear to be that.

24 Q. Mr. Scotten didn't show you any actual e-mails with this
25 information that was sent to Mr. Calk, true?

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Paulson - Cross

1 A. True.

2 Q. You don't have that e-mail with you, do you?

3 A. I don't.

4 Q. Now, with respect to 719 there is some information listed
5 in this bulletin, correct?

6 A. Yes.

7 Q. It's a summary of some of the latest developments and
8 updates to the handbook, true?

9 A. Yes.

10 Q. What's in this bulletin does not contain the information
11 about collateral that Mr. Scotten showed you in Exhibit 704,
12 true?

13 A. The bulletin wouldn't unless there was new information in
14 the handbook. So that would suggest the information in the
15 handbook on collateral was existing information prior to this
16 update.

17 Q. To get to that handbook, this is my point, that information
18 that Mr. Scotten showed you in 704, you have to receive this
19 bulletin, true?

20 A. You don't have to. You can go find the handbook on the OCC
21 website.

22 Q. So you have to go to the website and look it up?

23 A. Yes.

24 Q. Once you get this bulletin you have to scroll down to the
25 bottom, true?

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Paulson - Cross

1 A. Yes.

2 MR. LaVERNE: We can scroll down.

3 Q. There is something that says related link at the bottom.

4 You see that?

5 A. Correct.

6 Q. Under related link the recipient of any e-mail containing
7 this bulletin would have to actually click on that link, true?

8 A. Again, they could click on the link. They could go
9 directly to our website.

10 Q. If they clicked on the link they wouldn't go right to those
11 two pages that Mr. Scotten showed you, true?

12 A. Correct. They would go to the cover page.

13 Q. They would go to the 136-page handbook, true?

14 A. Correct.

15 Q. You don't have, Mr. Paulson, any records showing who
16 clicked through that link, true?

17 A. If we did, I have never seen.

18 Q. You don't have a record showing that Mr. Calk clicked
19 through the link on Government Exhibit 719?

20 A. Correct.

21 Q. Mr. Paulson, if you read the bulletin, nowhere in this
22 bulletin does it say that the recipients of it are required to
23 click through the link, true?

24 A. That's true. They are required to understand the contents
25 of the handbook.

L6NMCAL3

Paulson - Cross

1 Q. My question is simply whether or not this bulletin tells
2 the recipient that they are required to click through the link.

3 A. It does not say that.

4 Q. Now, this bulletin on commercial real estate lending was
5 issued, as you said, back in 2013, true?

6 A. True.

7 Q. August of 2013, true?

8 A. Right.

9 Q. Which is some three years before the events in question in
10 this case, true?

11 A. Right.

12 Q. And did you check to see if there have been bulletins on
13 the subject issued in 2014?

14 A. I did not.

15 Q. Did you check to see if there had been bulletins issued in
16 2015?

17 A. I didn't.

18 Q. In 2016.

19 A. No.

20 Q. Sitting here today, you are not aware of any such bulletins
21 being issued in those three years, true?

22 A. I am not aware of updates to the commercial real estate
23 lending handbook, no.

24 MR. LaVERNE: Let's put on the screen now, if we
25 could, Government Exhibit 701.

L6NMCAL3

Paulson - Cross

1 Q. 701 is the bulletin on insider activities, updates to the
2 insider activities handbook that Mr. Scotten showed you, true?

3 A. Right.

4 Q. Again, this is the same format where if you received the
5 bulletin, to access the handbook you got to scroll all the way
6 down and click on related links, true?

7 A. True.

8 Q. Nothing in this bulletin tells the recipients that they are
9 required to click on the link, true?

10 A. True.

11 Q. And you have no record that Mr. Calk ever clicked through
12 that link, true?

13 A. True.

14 Q. You have no record that Mr. Calk ever went to those couple
15 of pages you were shown, correct?

16 A. That's true. That doesn't change their responsibility for
17 knowing the regulation and knowing the guidance that's in the
18 handbook.

19 Q. This booklet Mr. Paulson was also issued in November of
20 2013, true?

21 A. Yes.

22 Q. Which was three years before the events in question, true?

23 A. Right.

24 Q. You don't know whether or not there are any updates to this
25 handbook issued in 2014, true?

L6NMCAL3

Paulson - Cross

1 A. I have not looked to see if there is, no.

2 Q. 2015, true?

3 A. Right.

4 Q. 2016, true?

5 A. Same.

6 MR. LaVERNE: I'd like now to turn to Government
7 Exhibit 702. Put that on the screen.

8 Q. This, Mr. Paulson, is the two-page excerpt of 50-page
9 handbook that Mr. Scotten showed you on direct, true?

10 A. Yes.

11 (Continued on next page)

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L6NKCAL4

Paulson - Cross

1 BY MR. LaVERNE:

2 Q. Now, Mr. Scotten asked you a number of questions about the
3 regulations and concepts that are in this excerpt, true?

4 A. True.

5 Q. Now, if we could turn to page 13 of this exhibit, numbered
6 page 13 - it's on the screen there in front of you -

7 Mr. Scotten asked you, in particular, about the regulation in
8 the middle of the screen, 12 CFR 163.200, conflicts of
9 interest, true?

10 A. Yes.

11 Q. And I believe when Mr. Scotten asked you about it, he asked
12 if you could just summarize it, true?

13 A. Yes.

14 Q. Now, if you read this -- let's read it. It says,
15 "directors, officers, employees, federal savings associations,"
16 right?

17 A. Yep.

18 Q. "Or persons having the power to direct the savings --"

19 MR. SCOTTEN: Objection to reading the entire exhibit.

20 MR. LaVERNE: It's just a paragraph.

21 THE COURT: Overruled.

22 BY MR. LaVERNE:

23 Q. "Or persons having the power to direct the savings
24 association's management or policies," true?

25 A. Yes.

L6NKCAL4

Paulson - Cross

1 Q. "Or otherwise owe a fiduciary duty to the association must
2 not advance their own personal business interests or those of
3 others with whom they have a personal business relationship at
4 the expense of the savings association."

5 That's what it says, correct?

6 A. Yes.

7 Q. And that's what the rule provides, right?

8 A. Yes.

9 Q. And the rule goes on to say they also must, if they have an
10 interest in a matter or transaction, before the board of
11 directors, right?

12 A. Yes.

13 Q. Disclose certain information and refrain from participating
14 in board discussions on the matter or voting on the matter,
15 true?

16 A. True.

17 Q. This regulation governs matters that are before the board
18 of directors, true?

19 A. Yes.

20 Q. There is no further guidance in this rule as to what
21 advancing your own personal interests at the expense of the
22 savings association means, correct?

23 A. Not in this paragraph, no. I don't see anything relevant
24 to that.

25 THE COURT: I'm sorry, I can't hear you.

L6NKCAL4

Paulson - Cross

1 THE WITNESS: I don't see anything in this paragraph
2 to that effect.

3 BY MR. LaVERNE:

4 Q. And there's no further guidance in this rule as to what
5 having a matter or transaction before the board of directors
6 means, true?

7 A. I believe that's true relative to the rule, but that
8 doesn't change the duty of loyalty.

9 Q. The question simply is: What is in the rule that you say
10 was sent to bank CEOs, that's what the rule says, true?

11 A. True.

12 Q. Now, if we look at above that, on Government Exhibit 719,
13 there's another rule Mr. Scotten asked you about, 12 CFR
14 160.130, true?

15 A. I don't believe he asked me about that rule, no.

16 Q. I seem to recall him asking, but I'll ask you some
17 questions about it anyway.

18 A. Okay.

19 Q. Now --

20 MR. SCOTTEN: Objection; beyond the scope.

21 MR. LaVERNE: It's in an exhibit that the government
22 introduced.

23 THE COURT: I'll allow it.

24 BY MR. LaVERNE:

25 Q. The title of the rule is called, "Prohibition on Loan

L6NKCAL4

Paulson - Cross

1 Procurement Fees," correct?

2 A. Yes.

3 Q. And the regulation says: "This regulation prohibits
4 directors, officers, or other persons having the power to
5 direct the management or the policies of the federal savings
6 association from receiving, directly or indirectly, any
7 commission, fee, or other compensation in connection with the
8 procurement of any loan made by the savings association or
9 subsidiary," true?

10 A. Yes.

11 Q. So, the rule is entitled, "Prohibition on Loan Procurement
12 Fees," true?

13 A. Yes.

14 Q. And it says it applies to commissions, fees, or other
15 compensation, true?

16 A. Yes.

17 Q. The rule provides no definition to those you say who
18 received it of what a commission, fee, or other compensation
19 is, true?

20 A. The rule itself does not, no.

21 Q. And the rule does not discuss, for example, whether or not
22 it applies to the receipt of a voluntary job on a political
23 campaign, true?

24 A. It doesn't say that. I would interpret other compensation
25 broadly.

L6NKCAL4

Paulson - Cross

1 Q. I'm not interested in your interpretation; I'm interested
2 in what the rule says.

3 Does the rule say that?

4 A. It does not say that.

5 Q. And it doesn't say anything about this rule applying to
6 providing a referral for a government job, true?

7 A. It does not.

8 Q. I'd like to turn now to another topic.

9 You testified, Mr. Paulson, about the various
10 handbooks that the OCC issues, true?

11 A. Yes.

12 Q. And you testified about the OCC's regulatory mission, true?

13 A. Yes.

14 Q. And you testified there's various ways that the OCC
15 enforces that mission, true?

16 A. Right.

17 Q. And one of the ways that the OCC enforces its mission is to
18 conduct regular examinations of the banks under its
19 supervision, true?

20 A. Yes.

21 Q. And, Mr. Paulson, it's no secret that the bank conducts
22 these examinations, true?

23 A. That the OCC conducts the examination?

24 Q. Yes.

25 A. You said "the bank."

L6NKCAL4

Paulson - Cross

1 Q. I'm sorry. Thank you for correcting me.

2 A. Okay.

3 Q. It's no secret that the OCC conducts these examinations of
4 banks, true?

5 A. Correct.

6 Q. In fact, the OCC advises bankers that they will be examined
7 on a regular basis, true?

8 A. True.

9 Q. There's something the OCC has called the supervisory cycle,
10 true?

11 A. Correct.

12 Q. And under that cycle, there's a presumption that banks are
13 examined on at least a quarterly basis, true?

14 A. No, that's -- well, they would receive an examination every
15 12 to 18 months, depending on the size of the institution and
16 some other factors. We contact each institution every quarter,
17 but I would not call that an examination on a quarterly basis.

18 Q. Okay. But you make banks aware that they are examined on
19 an annual basis, with some exceptions, every 18 months, true?

20 A. Correct.

21 Q. And that annual examination that you tell bankers is going
22 to happen is what's called a full-scope examination, true?

23 A. Correct.

24 Q. And that's an examination where you go on-site, true?

25 A. In most cases, yes. Obviously, over the last year, not so

L6NKCAL4

Paulson - Cross

1 much.

2 Q. And sometimes the OCC is on-site for days or weeks, true?

3 A. Yes.

4 Q. And these examinations, these full-scope examinations,
5 they're not a surprise, right?

6 A. They are not a surprise, generally, no.

7 Q. And you're entitled as the OCC, under federal statute, to
8 prompt and unrestricted access to the bank's books and records,
9 true?

10 A. Yes.

11 Q. And bankers know that, true?

12 A. They do.

13 Q. And you're entitled to communicate freely with bank
14 personnel during the examination, true?

15 A. That's true.

16 Q. And bankers know that, true?

17 A. They do.

18 Q. I'd like to ask you a few questions about another topic.

19 As part of this supervision --

20 THE COURT: I'm going to interrupt for just a second.
21 It's two minutes till 4:00. So, unless it's a very short
22 topic, what I would do is suggest we just postpone it until
23 tomorrow.

24 MR. LaVERNE: That's fine. Thank you, your Honor.

25 THE COURT: Okay.

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Paulson - Cross

1 So, you're excused temporarily. The jury, because of
2 our COVID procedures, breaks at 4:00, so I would like you to
3 come back and testify tomorrow, please.

4 THE WITNESS: Okay.

5 THE COURT: Okay. You can step down.

6 (Witness temporarily excused)

7 THE COURT: So, ladies and gentlemen, we're breaking
8 for the day. We'll resume at 10:00 a.m. tomorrow promptly.
9 I'd like you to be here, as I said, by 9:45. If you need to
10 get here earlier than that to assure that you aren't late,
11 please do that.

12 We should have notebooks and something to write on
13 tomorrow, and so you'll be able to do that.

14 I would ask you, and instruct you again, to follow all
15 the instructions I gave earlier. I won't repeat them except to
16 say, please don't communicate with anyone about the case,
17 please don't read anything about the case, or do any research
18 about the case.

19 I wish you all a good evening, and I look forward to
20 seeing you tomorrow. Thank you.

21 (Continued on next page)

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1 (Jury not present)

2 THE COURT: You can sit down. I wanted to do a little
3 bit of housekeeping.

4 Can the lawyers provide notebooks tomorrow for the
5 jurors, and pens? We were just going to give them paper, but
6 one of them had asked us for notebooks because they were
7 concerned about having something, a hard surface, to write on,
8 and so if it's possible to come up with notebooks, that would
9 be much appreciated.

10 MR. SCOTTEN: We have notebooks, your Honor. We never
11 got the cue to hand them out. So we can give them to
12 Mr. Street tomorrow morning, if that's what you prefer?

13 THE COURT: If you have them now, you can give them to
14 him now, but if you don't have them now, tomorrow morning is
15 fine.

16 MR. SCOTTEN: I'm told we have them now, so we'll work
17 it out with the Court's deputy when your Honor is finished.

18 THE COURT: That's good.

19 Do you have pens, too?

20 MS. ROTHMAN: Yes, your Honor.

21 THE COURT: Even better.

22 Then what I'd be interested in is a comprehensive
23 witness list, with a proposed order of calling them. I
24 understand that sometimes, because of schedules, the schedule
25 isn't always met, but just so I have some idea, because, as I

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1 sit here, I haven't reviewed your 3500 material, I don't really
2 know who's going to testify. So if you could email that to me,
3 with a copy to defense counsel, I'd appreciate that.

4 MR. SCOTTEN: Our order gets nebulous as the case goes
5 on, but we've been giving the defense counsel a week, and we
6 can do the same for your Honor.

7 THE COURT: Okay. I'd just like an entire list, so I
8 have a sense during the trial of how far we are. I will not
9 hold you in any way to the order.

10 MR. SCOTTEN: Got it.

11 THE COURT: I will ask you every evening who's
12 testifying the next day, and that's my next question.

13 MR. SCOTTEN: So, Ms. Ivaknik.

14 THE COURT: Who's that?

15 MR. SCOTTEN: She's a -- she was a banker's assistant
16 at the Federal Savings Bank who was involved. She essentially
17 worked for the loan officer for the first five or six weeks of
18 the loan process, and then she left the bank due to reasons
19 that the parties agreed not to inquire about, why she left the
20 bank.

21 THE COURT: Okay.

22 MR. SCOTTEN: That's who she is in the case.

23 THE COURT: All right.

24 MR. SCOTTEN: I think there's likely, then, to be a
25 custodian, who was a custodian for some of the records related

L6NKCAL4

1 to the campaign -- the transition?

2 MS. ROTHMAN: Yes.

3 MR. SCOTTEN: -- the transition to which the defense
4 would not stipulate, so we assume it will be a short witness.

5 MS. ROTHMAN: Your Honor, his name is Kory Langhofer.
6 He's from the presidential transition team, and he will
7 authenticate a handful of documents that we would offer.

8 And then the next witness would be Anthony Scaramucci,
9 who was part of the transition team, and he will testify to the
10 manner in which Mr. Calk obtained an interview at Trump Tower
11 through Mr. Manafort's reference.

12 And then depending upon timing, the next witness would
13 be Melissa Baccari from the Federal Bureau of Investigation.

14 I'll just note that the government's other custodial
15 witness, Michael Weil, who was here today, is unavailable
16 tomorrow, so we'll likely call him on Tuesday, and that means
17 that we may be offering possibly some documents subject to
18 connection during the testimony of Special Agent Baccari, but
19 we can discuss that depending upon timing tomorrow.

20 THE COURT: Okay. That's fine.

21 And I think Mr. Street has already asked the lawyers
22 for a daily exhibit list that's updated to show what has been
23 admitted. Is there anything that I need to address for
24 tomorrow? For example, I know -- and I could actually address
25 it now -- there was a request for a ruling with regard to

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1 Government Exhibits 285 and 285-1, and, principally, what we're
2 talking about is a voicemail from James Brennan, who was vice
3 president of the bank, to Javier Ubarri, and, as I understand
4 it, the statement that is in the voicemail that is offered for
5 the truth is the statement that, "The other members of the
6 loan" -- sorry. The statement is, "I'll try and reach out to
7 Jim Norini, the other member of the loan committee, that's
8 apparently not party to this conversation."

9 And my understanding, from the letter, is that the
10 government is seeking to introduce this statement by
11 Mr. Brennan on the theory that he was acting as an agent of
12 Mr. Calk under Federal Rule of Evidence 801(d)(2)(B) similar to
13 the basis on which I had admitted statements of Mr. Raico. In
14 that case, however, I found that Mr. Raico was acting as an
15 agent of Mr. Calk personally in furtherance of Mr. Calk's
16 personal interests and not simply acting as an agent of the
17 bank. And you will recall that, in contrast, I had excluded
18 statements of Thomas Horn because there wasn't any evidence
19 that he was acting as an agent of Mr. Calk personally.

20 And based on the submissions, there does not appear to
21 be any evidence -- I see you, Mr. Scotten, so I'll finish my
22 sentence, and I will hear from you -- but it did not appear that
23 there was evidence that Mr. Brennan was acting as an agent of
24 Mr. Calk in his personal capacity as opposed to acting as an
25 agent of the bank. So, tell me why you think there may be

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1 other evidence.

2 MR. SCOTTEN: So, your Honor is correct that he is not
3 sort of solely and outside the bank personal agent, but I think
4 in accordance with, I think, all of the cases there is, I think
5 the courts are uniform that there is no requirement for
6 personal agency. The only dispute between the parties seems to
7 be the degree of proximity of the business relationship. That
8 is to say, most cases, including the Second Circuit, suggest
9 that it's enough that the defendant be the ultimate supervisor
10 of the agent in the business relationship, and the defense has
11 relied on some suggestions in out-of-circuit cases that it must
12 be a direct supervisory relationship. We had assumed --
13 although your Honor didn't make express exactly where you were
14 drawing the line, we had assumed that you had excluded Mr. Horn
15 because if you draw the line with Mr. Horn, you would see
16 Mr. Horn works for Mr. Brennan, and so he is at least two steps
17 removed from the defendant.

18 By contrast, Brennan is the secretary of the credit
19 committee over which Mr. Calk presides, and this statement is
20 obviously about the credit committee business, so we were
21 trying to make the argument in our submission that here, at
22 least, within the confines of credit committee business, there
23 is that proximate relationship. We certainly don't really
24 think there's any support for the defense's view that it has to
25 be a direct supervisor, but even if there was, within the

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1 credit committee business, that would be met. I know the
2 defense submission is for underwriting purposes --

3 THE COURT: Let me just interrupt for a second --

4 MR. SCOTTEN: Yes, your Honor.

5 THE COURT: -- and ask you a more conceptual question.

6 MR. SCOTTEN: Yes, your Honor.

7 THE COURT: My assumption was that we all know that
8 statements by the defendant are admissible, basically, as
9 admissions of a party. And there is also this additional rule
10 that basically says that if you're an agent on behalf of the
11 party, then those statements are also admissible and within an
12 exception to the hearsay rule, and that makes sense because
13 it's tantamount to an admission by the defendant. So I guess
14 what I was looking for here was some indicia that the statement
15 was a statement made as an agent of the defendant, Mr. Calk,
16 which would make it admissible.

17 MR. SCOTTEN: So I think, your Honor, that that is not
18 actually the burden, and then, therefore, it's not the burden
19 we tried to satisfy. So, for example, what the actual burden
20 is, is the statement must be made on a subject matter within
21 the scope of the person's employment, but, very often, as the
22 Court can imagine, employment --

23 THE COURT: But within the scope of the agency
24 relationship. And that assumes that the person for whom the
25 witness is acting as an agent, that their statements would be

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1 admissible. But the bank is not a party or defendant here, or
2 even credit committee statements wouldn't be, it's Mr. Calk's
3 statements. But let me hear from the defense, and I think I'm
4 going to reserve and go back and look at the cases and review
5 it again, but, conceptually, the way the rule makes sense to me
6 did not fit the theory that you're suggesting to get
7 Mr. Brennan's statement into evidence, but let me hear from
8 Mr. Schoeman.

9 MR. SCHOEMAN: Thank you, your Honor.

10 All of the cases, including --

11 THE COURT: Do you mind just picking up the mic and
12 talking into it.

13 MR. SCHOEMAN: I don't mind.

14 How about that, does that help?

15 THE COURT: If you just pick it up, it's easier.

16 MR. SCHOEMAN: All right. I like this.

17 All of the cases, including the Second Circuit cases,
18 basically look at the nature of the agency relationship. It's
19 not enough that someone is merely an employee of the
20 organization. So, the famous Second Circuit cases, the
21 sheriff's office cases, and his deputies are his agents. But I
22 don't think any case says that just because you're an employee
23 of an organization, your statements are admissible in a
24 criminal case personally against the defendant. I think, your
25 Honor, with respect to Raico, had made the analysis, as you

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1 just articulated. That does not exist at all with respect to
2 Brennan, who I think the government would have to admit to your
3 Honor will testify that he never spoke to Mr. Calk personally
4 about these loans, and he is merely an employee who, in this
5 particular email, is saying, I'm in the dark, no one is talking
6 to me, and I want to call somebody else, which hardly seems
7 like it could even, under any circumstance, be a statement
8 attributable to Mr. Calk, since he's basically saying nobody
9 told me anything.

10 THE COURT: Okay. I understand.

11 MR. SCOTTEN: I --

12 THE COURT: I'll take it under advisement. I'll hear
13 you one last time.

14 MR. SCOTTEN: Yes, your Honor.

15 I think the cases are the way to go here. I won't try
16 to put my point across. I do think it's important that the
17 Court realizes that that's actually not what Brennan is saying,
18 that he will testify about the meaning of this statement. What
19 he's actually saying is, I am calling you, member of the credit
20 committee, to tell you stuff that I know because the defendant
21 is telling me, Steve Calk is telling me what to do, but he's
22 not telling anyone else on the credit committee, so I am going
23 to relay that information that I have from Calk to you, which I
24 think is likely to be highly relevant towards this analysis.

25 THE COURT: Okay.

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1 So, if he can describe that, why do you care about the
2 voicemail?

3 MR. SCOTTEN: I assume – and I think that was
4 reinforced by the defense opening – that the defense theory is
5 now everyone at the bank says they thought better of this, they
6 knew better, but back then, no one was telling the defendant
7 these things, so a contemporaneous voicemail in which the
8 underwriter says, Calk isn't telling you guys what's going on,
9 so I'm calling you, you could see, your Honor, why that would
10 be much more probative than him saying it on the stand three
11 years later.

12 THE COURT: Okay. I understand.

13 I will take it under advisement.

14 I think that's all the housekeeping. Is there
15 anything else we need to talk about before we continue with
16 Mr. Paulson tomorrow?

17 MR. SCOTTEN: I don't think there's anything that has
18 to be done this evening, your Honor.

19 THE COURT: Or first thing tomorrow morning, because
20 I'd rather do it this evening than hear about it at
21 8:00 tonight.

22 MR. MONTELEONI: Your Honor, regarding the rulings
23 that you made with the admission of some of the evidence
24 yesterday, we've been going through the list and attempting to
25 incorporate it, we've been talking to defense about some of the

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1 new exhibits.

2 We would like a little more opportunity to continue
3 our discussions both with respect to one or two more exhibits,
4 and, also, we think there might be some discrepancies in the
5 transcript and what we think there is, so we anticipate moving
6 into evidence a few more exhibits that the parties agree on and
7 perhaps clarifying a couple of the things on the record. We're
8 just not in a position to do that this afternoon, but we might
9 be in a position to do that tomorrow morning, so we would hope
10 to do that.

11 THE COURT: Okay.

12 MR. LaVERNE: We're always happy to talk to
13 Mr. Monteleoni about exhibits. We'll do that tonight.

14 THE COURT: Okay.

15 So, if you need anything done tomorrow morning, we'll
16 plan -- I'll come out on the bench at a quarter till, and we'll
17 do whatever we need to do and can do before 10:00. I'll bring
18 the jury out promptly at 10:00. Does that work, or do we need
19 to come earlier?

20 MR. MONTELEONI: I apologize, I just didn't hear you.
21 A quarter to 10:00, were you proposing?

22 THE COURT: I was proposing, yes, 9:45.

23 MR. MONTELEONI: I think that should be fine. If
24 there's something --

25 THE COURT: I'm happy to come earlier, for us all to

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1 be here earlier, if you just tell me now.

2 MR. MONTELEONI: I don't think that, right now,
3 there's going to be anything -- I think it will be pretty
4 ministerial. We just need a little bit of time to get things
5 straight.

6 THE COURT: That's fine.

7 MR. MONTELEONI: So I think 9:45 is fine.

8 MR. LaVERNE: We're fine.

9 THE COURT: Anything from the defense side?

10 MR. LaVERNE: No. Thank you, your Honor.

11 THE COURT: All right. Have a good evening.

12 COUNSEL: You, too, your Honor.

13 (Adjourned to June 24, 2021 at 9:45 a.m.)

14 * * *

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